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Exhibit B

10-03635-jpm Doc 1003-2 Filed 02/17/23 Entered 02/17/23 15:20:51 Exhibit B-Deposition Transcript with redactions relating only to documents and Pg 2 of 130



Transcript of Herman Dewitte

Date: December 14, 2022

Case: Fairfield Sentry Ltd., et al. -v- ABN AMRO Schweiz AG, et al.

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	Dece		.,	
		1		3
1		1	APPEARANCES	
2	UNITED STATES BANKRUPTCY COURT	2	FOR PLAINTIFF:	
3	SOUTHERN DISTRICT OF NEW YORK	3	David S. Flugman Tony Russo	
4	Chapter 15 Case	4	Selendy Gay Elsberg 1290 Avenue of the Am	ericas
5	Case No 10-13164(CGM)	5	New York, NY, 10104	
6	Jointly Aministered	6		
7		7	FOR DEFENDANTS:	
8	In re:	8	Jeff E. Butler	
9	Fairfield Sentry Limited, et al., Debtor in Foreign Proceedings.	9	Clifford Chance 31 West 52nd Street	
10		10	New York, NY, 10019	
11	Fairfield Sentry Ltd.(In	11	ALSO PRESENT:	
12	Liquidation), et al., Plaintiffs,	12	Kenneth M. Krys(remot	e)
	v. Adv Pro 10-03636(CGM) ABN AMRO Schweiz AG, et al.,	13		
14	Deféndants.'	14		
	Fairfield Sentry Ltd.(In	15		
16	Liquidation), et al., Plaintiffs,	16		
	v. Adv Pro 10-03636(CGM)	17		
	ABN AMRO Schweiz AG, et al.,			
18	Defendants.	18		
	VIDEATABED DEDOCTION UPON ADAL	19		
20	VIDEOTAPED DEPOSITION UPON ORAL	20		
21	EXAMINATION OF	21		
22	HERMAN DEWITTE	22		
23	Wednesday, December 14, 2022	23		
24	Luxembourg	24		
25	Reported by: Christine Myerly	25		
		2		4
1	Deposition of HERMAN DEWITTE	1	EXAMINATION	·
2	held at the offices of:	2	By Mr. Flugman	7
3	The City by Gingkgo	3		
4	Luxembourg, 2310	4	INDEX OF EXHIBITIS	
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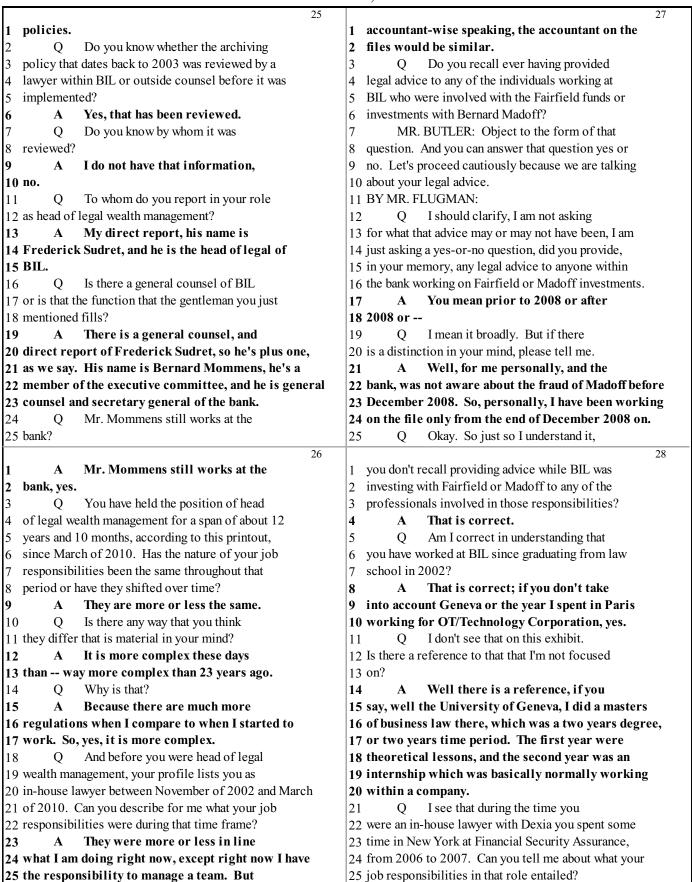
	7
5	7 1 on the record
2	2 MR. FLUGMAN: I can identify that I
3 LUXEMBOURG - December 14, 2022	3 believe our client, Kenneth Krys, one of the joint
9:30 a.m.	4 liquidators of the Fairfield funds, is joining by
5000	5 Zoom audio conference.
6 HERMAN DEWITTE, Deponent herein, having been	
7 first duly sworn on oath, was examined and testified	6 THE VIDEOGRAPHER: Thank you. Our court
8 as follows:	7 reporter is Christine Myerly on behalf of Planet
9	8 Depos. Could I ask the court reporter to please
10	9 swear in the witness, and we will proceed.
11	THE COURT REPORTER: Will counsel please
12	11 stipulate that, in lieu of formally swearing in the
13	12 witness, the reporter will instead ask the witness
14	13 to acknowledge that their testimony will be true
15	14 under the penalties of perjury, that counsel will
16	15 not object to the admissibility of the transcript
17	16 based on proceeding in this way, and that the
18	17 witness has verified that he is, in fact, Herman
19	18 Dewitte?
20	MR. BUTLER: Yes, I agree.
21	20 MR. FLUGMAN: I agree.
22	21 (Witness was sworn.)
23	22 (Exhibits 1 and 2 marked for identification.)
24	23 EXAMINATION
25	24 BY MR. FLUGMAN:
	25 Q Good morning, Mr. Dewitte. As I
6	25 Q Good morning, ivii. De witte. 7 to 1
1 (On the record at 9:36 a.m.)	1 stated a moment ago, my name is David Flugman, I'm a
l- mynymprochinymp c'il i y	2 partner of the law firm Selendy Gay Elsberg in New
<u> </u>	
4 Herman Dewitte in the matter of Fairfield Sentry	
5 Limited, et al, versus ABN AMRO (Schweiz) AG, et	5 whom I believe is on the line with us today.
6 al., in the United States Bankruptcy Court, Southern	The funds are plaintiffs in a lawsuit that
7 District of New York. Case number 10-13164.	7 was filed against Dexia Banque Internationale of
8 Today's date is December the 14th, 2022.	8 Luxembourg, which I understand is now referred to as
9 The time is 9:36 a.m. The videographer today is	9 Banque Internationale of Luxembourg.
10 Wendy Viner on behalf of Planet Depos. This	Throughout the course of the day today, I
11 deposition is taking place at 14-16 Avenue Pasteur,	11 am going to refer to the bank as BIL, I hope that is
12 Luxembourg.	12 okay with you. To be clear, when I use the term BIL
Could I ask counsel to identify themselves	13 today, I mean to include BIL in any predecessor
14 and state whom they represent.	14 entity that may have gone by a different name. Do
MR. FLUGMAN: Good morning, David Flugman	15 you understand that I mean to include so if the
16 from Selendy Gay Elsberg PLLC, along with my	16 bank was known as Dexia BIL at a certain point in
17 colleague Tony Russo, representing the Fairfield	17 time, when I use the term BIL, I mean to include
18 funds plaintiffs.	18 that as well?
MR. BUTLER: Jeff Butler from Clifford	19 A Okay.
20 Chance, representing Banque Internationale	20 Q Just to confirm, you currently are
21 Luxembourg.	21 employed by BIL, correct?
22 THE VIDEOGRAPHER: Can I ask the Zoom	22 A Confirmed.
23 participants to state their name for the record,	23 Q Sir, have you ever provided
24 please.	24 deposition testimony before?
25 MR. BUTLER: David, can you just identify	25 A No, I never have.
125 IVIII. DO ILLIA. David, can you just identity	11 110, 1 He vel Have.

Decembe	er 14, 2022
9	11
1 Q And have you ever testified in	1 some of my questions for the record. But unless he
2 connection with a U.S. litigation?	2 instructs you not to answer my question, you still
3 A No, I never have.	3 must answer it if you understand it. Do you
4 Q Before we begin, I would like to	4 understand?
5 go over a couple of the ground rules for today's	5 A I understand.
6 deposition so we are all clear up front.	6 Q Sir, are you currently taking any
First, as you see to your immediate left,	7 medication that might impact your memory or your
8 we have a court reporter, who is working hard to	8 ability to recall events or answer my questions
9 take down everything that we all say in the room	9 today?
10 during the deposition. It is important that you	10 A No.
11 allow me to finish asking my question before you	11 Q Is there anything else that might,
12 respond, and I of course will extend to you the same	12 in your opinion, impact your memory or ability to
13 courtesy so that nobody is talking over one another	13 testify here today?
14 and the court reporter can get a clean record. Is	14 A No.
15 that okay?	15 Q Is there any reason that you can't
16 A Perfect.	16 give your best, most accurate and complete testimony
17 Q It is also important that you	17 sitting here today?
18 provide verbal answers to my questions. Again, the	18 A No.
19 court reporter can't transcribe head nods or shakes.	19 Q There is one additional definition
20 So please try to answer my questions verbally.	20 and term about which I want to be clear up front so
21 A I understand.	21 that I make sure we are in agreement at the start.
22 Q We are speaking English today.	We are going to be talking a lot today
23 Are you fluent in the English language?	23 about electronically stored information, which I'll
24 A It is not my native language, but	24 refer to as ESI. When I use that term, ESI, I mean
25 I think I can express myself with a reasonable level	25 it in the broadest sense to include electronic data
10	12
1 of understanding, yes.	1 that is created, copied or stored in electronic
2 Q Are you comfortable you are	2 form, even if it may exist in a hard copy someplace
3 comfortable testifying today in English with me?	3 else.
4 A Yes.	4 That would include things like e-mails,
5 Q If at some point during the day	5 their attachments, but also voice mails, recordings
6 you don't understand a question that I ask, please	6 of phone calls, word processing documents like Word
7 tell me, and I will try my best to rephrase it so	7 for Windows files or Word Perfect files, call logs,
8 that you do understand it. That includes if I use a	8 electronic scans of hard copy documents and
9 word in English that you might not be familiar with.	9 electronic databases. Basically anything that
10 Please tell me.	10 exists in electronic form.
11 If you do answer my question without	So, when I use the term ESI, please keep
12 telling me that you don't understand it, I am going	12 that in mind as you're answering my questions. If I
13 to assume that you have understood it, is that fair?	13 have a specific question about a type of ESI, like
14 A That is fair, yes.	14 an e-mail or a database, I will ask that
15 Q We are going to aim to take a	15 specifically. But when I use that term ESI, please
16 break every hour or so. We will break longer for	16 think of it in that broad sense.
17 lunch. If you need to take a break at any other	MR. BUTLER: Let me just say for the
18 time during the course of the deposition, just tell	18 record that ESI is not a word that normal people use
19 me, and we will take a break. All I ask is that if	19 in the ordinary course. Mr. Dewitte is not very
20 I have a question pending on the table, that you	20 familiar with the way that terms is used in court
21 answer that question, and then we will take a break.	21 proceedings. So it may be helpful for clarity if
22 Okay?	22 you specify the type of electronic document you are
23 A Okay. Understood.	23 speaking about in your questions. Just making a
24 Q During the course of the 25 deposition, your counsel, Mr. Butler may object to	24 comment; of course you can ask whatever questions 25 you want.

December	r 14, 2022
13	15
1 BY MR. FLUGMAN:	1 A Yes.
2 Q Thank you. What I was about to	2 Q Okay. And you currently hold the
3 say as well is, if you ever have a question about	3 title head of legal wealth management, is that
4 what I mean when I use that term, if you are unsure	4 correct?
5 or if there is a distinction in your mind between an	5 A That is a correct, yes.
6 e-mail and a database, for example, or an e-mail and	6 Q And you have held that title from
7 a document that's scanned into an electronic form,	7 March of 2010 to the present?
8 please tell me, and I will do my best to clarify.	8 A That is correct, yes.
9 As I said, I will try and ask specific	9 Q Can you describe for me, please,
10 questions as I go through the deposition if I mean a	10 what your responsibilities are in that role?
11 specific type of ESI. If I do use that term, I do	11 A I am heading a four to five number
12 mean it in that broad sense. If you have any	12 of lawyers team. We are specialized in providing
13 questions about that, please let me know.	13 service, legal service, to wealth management
14 A Okay.	14 clients. That includes but is not limited to
15 Q Okay.	15 granting loans to credit facilities, taking the
16 (Off the record discussion.)	16 appropriate guarantees.
17 BY MR. FLUGMAN:	17 Secondly, investment services. Investment
18 Q Let's take a look at what has been	18 services, which has within Europe a very specific
19 marked as Exhibit 2, which is in your hands. I will	19 definition, according to MiFIDs, which are European
20 represent to you that this is what we understand to	20 directives implemented in each member state.
21 be a profile of you from LinkedIn. The reason I've	21 And thirdly, we supervise services, or
22 showed it to you is hopefully we can use this to	22 legal internal services, in relation to insurances,
23 walk through some of your background in a way that	23 because our bank is not only licensed as a bank, it
24 will streamline the deposition.	24 is also licensed as an insurance broker.
The first question I have for you is,	25 Q So do I understand you correctly
14	16
1 turning to page 3 of the exhibit, where it lists	1 that you function in this role as a lawyer within
2 some of your employment history and education, can	2 the bank?
3 you glance at that and just let me know if anything	3 A That is correct. Yes.
4 there is inaccurate.	4 Q Do you serve in any business role,
5 (Pause.)	5 or strictly a legal role?
6 A There is one specific point I want	6 A Well, when you are an in-house
7 to highlight, is that in-house lawyer for Dexia from	7 counsel, of course our main goal or the main purpose
8 November 2007 until March 2010, technically speaking	8 of an in-house counsel is to make sure that
9 BIL was part of the Dexia group until 2012, and not	9 everything that is done within the bank is aligned
10 2010, just for your information.	10 with the legal obligations of Luxembourg, or outside
11 Q Okay. While you were working in	11 of Luxembourg. But we are also being paid to do
12 the role first of all, I think you said 2007, did	12 business. So it has a kind of, well, double
13 you mean November 2002?	13 function. But our main goal of course is a legal
14 A There is mentioned from November	14 function, yes.
15 2002 until 2010.	15 Q Okay. Let me be perhaps more
16 Q Okay.	16 specific. Do you in your job as head of legal
17 A But BIL was part of the Dexia	17 wealth management provide investment services to
18 group not until 2010, but until 2012.	18 clients, do you counsel clients on investments they
19 Q Okay.	19 might make?
20 A A little bit above there is the	20 A No.
21 BIL logo, which might lead to confusion when BIL has	21 Q Who would you consider to be your
22 been sold to a third shareholder.	22 clients in your role?
23 Q I understand. Throughout the time	23 A As I said before, we have internal
24 period November 2002 to March 2010, was BIL part of	24 clients of the bank, then we also have the end
25 the Dexia group?	25 clients of the bank. So, our main clients are, of

17 19 1 course, the internal clients, but because our goal 1 that first of all we provide legal advice in 2 or aim is to be efficient and to provide internal relation to investment services about the Luxembourg 3 services to our internal clients, they are happy regulations, first of all. when their end clients are happy. So, basically we Secondly, in that specific area of advice, have two kind of clients. I don't know if that is our advice is very limited, because most of the time understandable or not. we work on templates, advisory templates, which are 6 I think I understand. Let me only exceptionally tailor-made. So our team will clarify. As I understand it, you provide legal never be involved in the choice of a specific stock advice to people working within the bank about their or -- it will only be in relation to the -- either 10 jobs. 10 the interpretation of the Luxembourg law regulations Correct. 11 or European law regulations, which have been 11 A 12 Q Do I understand you correctly that 12 implemented in Luxembourg as a member state. Either 13 you also provide legal advice to customers of the 13 templates. 14 bank? 14 Okay. I understand. With respect 15 A Not directly to customers, no. 15 to the last part of your answer, I take it as part 16 But they are involved in -- for instance, if we 16 of your job you are familiar with applicable 17 structure and if we implement a credit file for a 17 regulations that would govern the bank, such as the 18 client, so typically a German client who's acquiring 18 Luxembourg regulations you just mentioned and the 19 real estate in Spain, for instance, we will work on 19 European directives, is that right? 20 the credit facilities, on the collateral, but we 20 In relation to investment advice? 21 will also work closely together -- so internally not 21 Q Well, in relation to -- in 22 only with relationship manager, so the employee of 22 relation to regulations that govern the bank's 23 the bank, but also closely with the client himself, 23 operations broadly, do you have familiarity with 24 especially if he has no outside counsel. 24 that? The investment professionals to 25 Broadly speaking, yes. But law, 18 20 whom you provide legal services who work within the as you probably know, is so broad, that our bank, do those include professionals who work with competences are limited to the ones I mentioned clients in making investments in hedge funds? previously. And even in relation to those We do have investment competences, when we have to work in a specific professionals providing advice to -- depends on your file, it is maybe that we ask outside counsel for definition of hedge funds. I don't know if your 6 help. definition of hedge funds can be aligned with a 7 Q Do you have familiarity generally definition like not stock quoted assets? with Luxembourg or European regulations on What about -- sorry. preservation of information within the bank broadly? Q 10 A Sorry, is that what you mean? 10 It is not part of our scope of O I mean funds like the Fairfield 11 competences within the bank, so it is something --12 funds, so private funds that make investments in, 12 well, when internally I am being asked questions 13 you know, funds of funds or other types of vehicles 13 about these kind of topics, I would typically refer 14 like that. There are professionals in the bank who 14 to internal other specialists. 15 work with private clients in making those 15 When you say it is not our 16 investments, right? 16 competence, are you referring to your group, 17 There are professionals within the 17 yourself and the four to five-lawyer team that you 18 bank who are financial advisors, and they liaise 18 described? 19 with clients in relation to their investment 19 A Exactly. 20 appetite. These can include listed stock or 20 Q Okay. So to whom would you go if 21 non-listed stock, yes. 21 there was a question about preservation of documents Would those be among the people to 22 or electronic information within the bank? 22 23 whom you provide legal advice in your role as head Document preservation, I would 23 24 of legal wealth management? 24 first go to compliance department, because in Europe 25 you have GDPR regulations, which are the global data 25 That is correct, to the extent

	21 2022			
1 protection regulations; then afterwards I would go	1 very long time, but he was not that specific to give			
2 and check with the person in charge of the policies,	2 a specific date from which moment on he was in			
3 of internal policies of the bank, what exists within	3 charge of that policy or the archiving management in			
4 the bank as policies.	4 general.			
5 Q And who is in charge of creating,	5 MR. BUTLER: Let me just caution you			
6 maintaining policies relating to archiving and	6 again. I mean, that answer was fine, of course, but			
7 preservation of information within the bank?	7 you should try to avoid talking about the specific			
8 A Per policy, there is a policy	8 conversation that we had with Mr. Wagener as opposed			
9 owner within the bank, so the archiving of documents	9 to just providing the factual information that he			
10 policy, there is a specific owner, and his name is	10 conveyed. I understand that is a hard line to draw,			
11 Gilles Wagener.	11 but we are going to try to draw that line during			
12 Q What is Mr. Wagener's title?	12 this deposition.			
13 A Mr. Wagener's title he is	13 BY MR. FLUGMAN:			
14 responsible for the archiving and documents	14 Q Was this the first time that			
15 management of the bank. This is one of his	15 yesterday's conversation, was that the first time			
16 competences, yes.	16 that you spoke with Mr. Wagener about the archiving			
17 Q Does he have a title within the	17 policies and document retention that we are here to			
18 bank?	18 talk about today?			
19 A He has a title, but well, I	19 A Yes.			
20 didn't check that in detail.	20 Q Do you know if anyone else at the			
21 Q Did you speak with Mr. Wagener in	21 bank or representing the bank spoke to Mr. Wagener			
22 connection with preparation for today's deposition?	22 previously?			
23 A Yes, we did. I spoke to	23 A In relation to this deposition?			
24 Mr. Wagener together with Jeff Butler, our outside	Q In relation to the issues about			
25 counsel. We spoke with him yesterday.	25 document preservation at BIL during the period we			
22	24			
1 Q Can you tell me how long you and	1 are here to talk about, 2000 to 2008 roughly?			
2 Mr. Wagener and Mr. Butler spoke?	2 A To the best of my knowledge, no,			
3 A It was roughly 30 minutes.	3 nobody else.			
4 Q Were there specific facts that you	4 Q Do you know whether Mr. Wagener			
5 learned from speaking with Mr. Wagener that are	5 was the owner of these policies prior to 2008?			
6 relevant to your testimony here today?	6 A I do not have that information.			
7 MR. BUTLER: Let me just caution you,	7 That is my understanding, that because he is in			
8 Mr. Dewitte, to only discuss factual information	8 charge of that department for as long I worked			
9 which you may have learned from Mr. Wagener as	9 within the bank. And I know that the within the			
10 opposed to the communications themselves that we had	10 bank and BIL in particular, the policies are being			
11 with him yesterday. You can answer the question.	11 drafted by not by legal, but by the operational			
12 A Basically, we exchanged about the	12 persons in charge of a specific domain of			
13 policy the internal policy applicable within the	13 competence.			
14 bank of which he is the owner.	14 Q So let me understand that. The			
15 Q And which policies are those?	15 policies are drafted by nonlawyers, do I understand			
16 A These policies, they have been	16 that correctly?			
17 provided to you, and they are entitled "Archive	17 A That is correct, yes.			
18 Management of Documents."	18 Q Are policies reviewed by lawyers			
19 Q Okay. I am sure we will talk	19 before they are implemented?			
20 about those in a bit. Has Mr. Wagener how long	20 A It depends. It depends of the			
21 has Mr. Wagener owned the archiving policies that	21 policy. When they have to be reviewed by legal, it			
22 you just described?	22 is mentioned on the policy. So the stakeholders,			
23 A As far as the initial policy	23 there is an owner mentioned on the policy, and			
24 that was retrieved goes back to 2003. He confirmed	24 stakeholders might be legal compliance or other			
25 yesterday that he was in charge of that policy for a	25 support functions which need to review these			



	December 14, 2022				
	29		31		
1	A Job responsibilities was mainly	1	any efforts to monitor compliance with that		
2	assisting in-house counsel in basically giving	2	litigation hold within the bank?		
3	them a hand in their day-to-day management of their	3	A Personally, I was not, no.		
4	files.	4	Q Have any of your responsibilities		
5	Q Did you have any exposure to U.S.	5	at BIL involved monitoring or evaluating compliance		
6	litigation when you were working in that role?	6	with Luxembourg regulatory requirements, or document		
7	A No.	7	preservation or retention?		
8	Q I see that you obtained a Master	8	A No.		
9	of Law from University of Brussels before attending	9	Q Have any of your responsibilities		
10) the University of Geneva, is that right?		at BIL involved monitoring or evaluating compliance		
11	A That is correct, yes.		with the document preservation or retention		
12	Q Sir, do you have any training in	12	2 requirements of other countries like the United		
13	3 information technology?	13	3 States?		
14	·	14			
15	· · · · · · · · · · · · · · · · · · ·	15	Q Do you personally have any prior		
16	6 experience with document preservation or archiving?		s experience with U.S. litigation before this		
17	A I have no specific training on	17	deposition?		
18	B that, no.	18			
19	, , , , , , , , , , , , , , , , , , ,	19	•		
	at BIL included managing electronic information, or		added "before this deposition" at the end of your		
21	ESI?		question. Maybe you should ask that question again		
22		22	so he hears the whole question before he responds.		
23		23	BY MR. FLUGMAN:		
	at BIL included investigating the potential	24	, , , , , , , , , , , , , , , , , , ,		
25	destruction or deletion of electronically stored	25	preparing for this deposition, had you had any		
	30		32		
1	information?	1	experience in your personal experience with U.S.		
2	A No.	2	litigation?		
3	Q Have any of your responsibilities	3	A No.		
4	at BIL involved monitoring or evaluating compliance	4	Q You understand that you are here		
5	with litigation holds for U.S. litigation?	5	today testifying as a corporate representative on		
6	A I'm sorry, could you repeat that	6	behalf of the bank, is that right?		
7	question, please.	7	A Yes.		
8	Q Of course. Have any of your	8	Q And you understand that that means		
	responsibilities at BIL involved monitoring or	9	that when you are answering my questions today, you		
	evaluating compliance with litigation holds issued		are answering based not just on what you have		
	in connection with U.S. litigation?		personally seen or experienced, but based on the		
12			2 information that was reasonably available to you on		
	3 time? I'm sorry for that, but I just want to be		the subject matters that are covered by the		
	sure that I correctly understand the question.		deposition, do you understand that?		
15	· · ·	15	* •		
	6 responsibilities at BIL involved monitoring or	16	• • • • • • • • • • • • • • • • • • • •		
	7 evaluating compliance with litigation holds issued		7 BIL's shoes today as you give deposition testimony,		
	3 in connection with U.S. litigation?		3 do you understand?		
19		19	· ·		
	has been has been issued or sent out to the bank,	20			
	l yes.		to testify as BIL's corporate representative?		
22		22	· · · · · · · · · · · · · · · · · · ·		
	3 litigation hold out internally at the bank?		S him not to answer that.		
24		24	· · · · · · · · · · · · · · · · · · ·		
25	Q Were you personally involved with	25	question. I'm not asking for the reason.		

Decembe	r 14, 2022
33	35
1 MR. BUTLER: I will let him answer the	1 A Well, I have reviewed internal
2 yes-or-no question. Can you repeat the question.	2 files within the legal department, first of all.
3 Then, Mr. Dewitte, you can answer yes or no.	3 Secondly, discussed with Jeff Butler, our outside
4 BY MR. FLUGMAN:	4 counsel, these different topics. And thirdly, I
5 Q Do you know why you were selected	5 have made together with Jeff Butler interviews of
6 to testify as BIL's corporate representative today?	6 certain BIL employees and also certain persons
7 A Yes.	7 outside the scope of BIL.
8 Q Okay. When were you first	8 Q Which internal files did you
9 informed that you might need to testify as BIL's	9 review in order to testify here today?
10 corporate representative?	10 A Physical files, physical binders,
11 MR. BUTLER: Again, I will object on the	11 and electronically available data on my file server,
12 basis of potential privilege. But you can give a	12 or my file server available within the legal
13 date if you know it, or the approximate time, but	13 department.
14 don't go into any of the substance of the	14 Q And what documents were contained
15 communications that you had about this deposition.	15 in those physical binders that you reviewed?
16 A Approximately a couple weeks ago.	16 A Can you please be a little more
17 BY MR. FLUGMAN:	17 specific about what documents? Do you mean yes.
18 Q Okay. Can you tell me who told	18 Q What categories of documents did
19 you that you who asked you to testify? Just the	19 you review in these physical binders in order to
20 person, I'm not asking for any substance of the	20 prepare yourself to testify here today?
21 conversation.	21 A Okay. Categories like e-mail or
22 A Frederick Sudret, head of legal.	22 physical documents or binders, is that what you
23 Q Sir, you understand that today's	23 mean?
24 deposition is about certain topics that are related	24 Q I am trying to understand what
25 to document preservation within the bank?	25 actual documents you looked at. For example, did
34	36
1 A I understand, yes.	1 you look at policies, did you look at communications
2 Q Okay. Let's take a look at the	2 from the relevant time period? What do you recall
3 document in front of you that's been marked as	3 about what you reviewed from a documents perspective
4 Exhibit 1, which is a copy of the notice of	4 in terms of the internal files you mentioned a
5 deposition.	5 moment ago?
6 MR. BUTLER: I have a copy.	6 A Okay. Thank you. So, they
7 BY MR. FLUGMAN:	7 include internal policies, include e-mail exchanges,
8 Q First my question is, have you	8 and also documents attached to those e-mail
9 seen this document before?	9 exchanges; as well as physical files available in
10 A Yes, I have.	10 our team or available at the inspection team.
11 Q If you can turn, please, sir, to	11 Q Were the e-mail exchanges that you
12 page 6 of the document, numbered page 6, where it	12 reviewed in electronic form when you reviewed them?
13 says, "List of topics of examination." Have you	13 A Yes. Electronic form, and also
14 reviewed the seven topics that appear on this list	14 printed out into the binders, yes.
15 on pages 6 and 7 of Exhibit 1?	Do you recall what time period the
16 A Yes, I have reviewed these topics.	16 e-mail exchanges you reviewed were from?
17 Q And are you familiar with each of	17 A Could you please rephrase that?
18 the topics listed in Exhibit 1 on the list of topics	18 Q Sure. Did you review e-mail
19 of examination?	19 exchanges that predate 2009?
20 MR. BUTLER: Objection to form. You can	20 A Yes.
21 answer.	21 Q Were those e-mail exchanges in
•	22 electronic form or in hard copy form?
22 A Yes.	
23 BY MR. FLUGMAN:	23 A Both.

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37	39		
1 2009?	1 respond, but yes		
2 A For instance, if you ask me for an	2 MR. BUTLER: Let me just object to that.		
3 example, the moment when BIL discovered about the	3 So, that is not exactly what he said. It is getting		
4 Madoff fraud, which was in by means of press	4 into the content of that e-mail, which was between		
5 reports, which we learned at the time in	5 lawyers within the bank at the time. So we just		
6 December 12th. So for instance, these kind of	6 need to go very cautiously.		
7 e-mails I have reviewed in order to prepare myself	7 BY MR. FLUGMAN:		
8 to topic number 2.	8 Q I am not trying to mischaracterize		
9 Q That is helpful. If I understand	9 your words. I thought you said task force. Can you		
10 you correctly, BIL learned of the Madoff fraud	10 tell me what the purpose of the task force you		
11 December 12, 2008?	11 mentioned was?		
12 A That is correct.	12 A The bank was not aware about the		
13 Q And do you recall whose e-mails	13 fraud of Madoff and discovered it at December 12th		
14 you reviewed in order to familiarize yourself with	14 at that time. And I also have reviewed a press		
15 that fact in connection with your preparation for	15 release of the Securities and Exchange Commission,		
16 the deposition today?	16 which was also circulated within the bank. This		
17 A Yes.	17 specific press release reports that Bernard Madoff		
18 Q Whose e-mails were they?	18 had 17 billion of assets under management at the		
19 A Several persons. There was for	19 beginning of 2008, and most probably which was one		
20 instance one e-mail sent from Bernard Mommens to	20 of the most important frauds in the economic history		
21 addressed to several employees of the bank by	21 of the planet earth, so it was huge.		
22 informing them that a task force has been	So the aim or the goal or the intention of		
MR. BUTLER: Let me just pause there. It	23 this task force was to check to what extent the bank		
24 is fine to mention the names of people who sent	24 would potentially be exposed to this fraud.		
25 e-mails that you reviewed if they were privileged,	25 Q Were you involved with that task		
38	40		
1 but you shouldn't go into the content of the	1 force at the time?		
2 e-mails, except very general descriptions of the	2 A Yes.		
3 content.	3 Q Do you recall when you say to		
4 A Okay. So if I rephrase, a	4 what extent the bank would be potentially exposed,		
5 specific e-mail I have in mind was being sent by	5 can you tell me what you mean by that?		
6 Bernard Mommens to several senior executives of the	6 A Yes. Sure. Well, important to		
7 bank in relation to an action plan to be	7 know is that the bank granted some loans to several		
8 implemented.	8 feeder funds ultimately invested in Madoff; four, to		
9 Q And you reviewed this e-mail in	9 be exact, with a total exposure at the time of		
10 electronic form in preparation for your deposition	10 discovery of the Madoff fraud of \$220 million US.		
11 today?	In parallel, out of these four feeder		
12 A That is correct, yes.	12 funds, two of them the bank actively commercialized		
13 Q Do you recall who in the bank	13 parts of the shares of these feeder funds. In other		
14 received Mr. Mommens' e-mail?	14 words, for a small to medium bank like BIL, this		
15 A Yes. There was for instance the	15 exposure was huge.		
16 head of legal at that time, Jean-Marc van Oldeneel,	16 And so it was important that the entire		
17 he was one of the addressees of that e-mail.	17 bank was aligned with what needed to be undertaken		
18 Q Do you recall any other	18 on credit side, on client side, on the insurance		
19 addressees, sitting here today?	19 side, on the communication with the regulator. It		
20 A Also the no. That is the	20 was an important file for the bank at the time, yes.		
21 main that was the main addressee.	21 Q Can you recall which feeder funds		
Q Okay. You mentioned that the	22 the bank made loans to, that you just referenced in		
23 e-mail discussed setting up a task force to respond	23 your answer?		
24 to the Madoff fraud, is that correct?	24 A Yes, I can.		
25 A It depends on the definition to	Q Which ones were they?		

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1 A Rafale Partners, Inc., Blue Star	1 after the fraud was discovered?
2 Funds, Mianda and Mount Capital Funds.	A No. Because at the time, the
3 Q Sir, do you know whether any of	3 Fairfield funds were not on the topic list of the
4 those funds are based in the United States?	4 bank. Why I'm sorry.
5 A I know that it is not the case.	5 Q Why
6 These feeder funds are incorporated either in BVI or	6 MR. BUTLER: I don't think you should go
7 the Cayman Islands. 8 Q All four of those funds?	7 into why as a matter of privilege. Why don't you
	8 stop there. 9 BY MR. FLUGMAN:
9 A Yes. 10 Q Do you know whether any of the	
10 Q Do you know whether any of the 11 four funds you mentioned have investment managers	10 Q You are aware, though, sir, that 11 BIL had made investments in the Fairfield funds
12 who are based in the United States?	12 prior to 2008?
13 MR. BUTLER: Let me just object to the	13 A That is correct, yes.
14 question as outside the scope of the deposition	14 Q And you are aware that the
15 topics. You can answer if you know. Mr. Dewitte is	15 Fairfield funds were incorporated in the British
16 not prepared to give for this deposition to give	16 Virgin Islands?
17 details about these matters. If he knows, he can	17 A Yes.
18 answer the question.	18 Q You are aware that the Fairfield
19 A I don't recall. It should be	19 funds investment manager, Fairfield Greenwich Group,
20 mentioned I guess in the prospectus of these funds,	20 was based in the United States?
21 but I didn't prepare that information for this	21 A Yes.
22 deposition.	22 Q Do you understand also that Mount
23 BY MR. FLUGMAN:	23 Capital is a Madoff feeder fund?
Q Do you know whether, as part of	24 A Yes.
25 the task force that you are describing, the bank	25 Q As is Blue Star fund?
42	44
1 considered whether it might have claims against any	1 A Yes.
2 of the managers of the four funds that you just	2 Q And do you understand that Blue
3 mentioned?	3 Star invested into Fairfield as well?
4 MR. BUTLER: I just object. I don't see	4 A Partially, yes.
5 how the witness could answer that question without	5 Q Okay. You mentioned reviewing
6 going into legal advice that was considered at the	6 e-mails in electronic form. Can you recall, in
7 time. So I will instruct him not to answer.	7 preparation for your deposition today, whether you
8 I guess as a yes-or-no question, if you	8 reviewed any other e-mails in electronic form that
9 know the answer, I would allow it. Maybe we can	9 predate the discovery of the Madoff fraud in
10 reread the question.	10 December of 2008?
11 BY MR. FLUGMAN:	11 A No.
12 Q That's what I'm asking at the	12 Q No, you can't recall, or no, you
13 moment. Do you know whether the task force	13 didn't review any?
14 considered if BIL had claims against the four funds	14 A Can you repeat the question?
15 that you just mentioned or their service 16 professionals, like investment managers?	15 Q Sure. Did you review any e-mails
1 1	16 in electronic form in preparation for today's 17 deposition that predate December of 2008 when the
	18 Madoff fraud was discovered by BIL?
18 Q Okay. You understand also that 19 BIL had exposure to the Madoff Ponzi scheme through	19 A No.
20 investments in Fairfield, correct?	20 Q You also mentioned that in
21 A I understand today, is that what	21 preparation for your testimony here today you
22 your question is?	22 interviewed certain individuals. Can you please
23 Q First, you understand today?	23 tell me the names of the people with whom you spoke
24 A I understand today, yes.	24 in preparation for the deposition today?
25 Q Did you understand that in 2008	25 A Sure. The first one you already
25 Q Dia you and istand that in 2006	25 A Sure. The first one you arready

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1 have his name, it's Gilles Wagener, we referred to	1 I am okay with that question. Limit your answer to
2 him previously.	2 the factual information that you may have learned
3 Second person I have spoken to is Aurore	3 from Ms. Moutte as opposed to the content of the
4 Moutte.	4 discussion we had with her.
5 Q Can you repeat that?	5 BY MR. FLUGMAN:
6 A Aurore, you spell that	6 Q With that clarification, do you
7 A-U-R-O-R-E, and Moutte, M-O-U-T-T-E; as well as	7 understand my question?
8 Michelle Albert; as well as William Goehry,	8 A Could you please repeat it?
9 G-O-E-H-R-Y; as well as Nicholas Vaisse,	9 Q Sure. Can you tell me the factual
10 V-A-I-S-S-E; as well as Maria Totaro; as well as	10 information that you discussed with Ms. Moutte in
11 Marie-Anne Salentiny, S-A-L-E-N-T-I-N-Y.	11 preparation for your testimony today?
You asked for the BIL employees we	12 A We discussed policies in relation
13 interviewed but also for other persons?	13 to documents, management and archiving.
14 Q I asked for all persons. But let	14 Q Did the policies that you
15 me ask before we get to that. Are the seven	15 discussed with Ms. Moutte relate to the time period
16 individuals you mentioned in the list you just gave	16 prior to 2009?
17 us, are those all people who are currently employed	17 A Yes.
18 by BIL?	18 Q And which policies did you discuss
19 A That is correct, yes.	19 with Ms. Moutte that applied prior to 2009?
20 Q Before we get to the others, we	20 A Archive management, document
21 talked about Mr. Wagener and his role. Can you	21 archive management.
22 describe Aurore Moutte first of all, is that a	22 Q Any others that you recall?
23 woman or a man?	23 A That was the main policy.
24 A It is a woman, yes.	24 Q Is that the policy that you
25 Q Can you please tell me	25 mentioned earlier that dates from 2003?
46	48
1 Ms. Moutte's role at the bank is?	1 A That is correct, yes.
2 A She is heading the team in charge	2 Q Michelle Albert I believe is the
3 of the policies of the bank, so the rules and	3 next name you mentioned. What is Mr. Albert's role
4 policies of the bank.	4 at the bank?
5 Q Do you know how long she has held	5 A He is an inspection officer. He
6 that position?	6 is a member of the inspection team.
7 A I don't have that exact	7 Q Could you describe what that is?
8 information available; for a couple of years.	8 A Inspection team is in charge of
9 Q Do you know whether she held that	9 very specific files; for instance, they would be
10 position prior to 2009?	10 involved if there is internal fraud or potentially
11 A I don't have that information.	11 an external fraud, compared to the internal audits.
12 Q Okay. Can you discuss the factual	12 Internal audit has a more follow-up
13 information that you discussed with Ms. Moutte?	13 function in the business, whereas inspection team
MR. BUTLER: Object to the question and	14 would really be looking at unusual occurrences of
15 instruct the witness not to answer on the ground of	15 the business of the bank. They are also in charge
16 privilege.	16 of liaising with the in French it's called the
17 MR. FLUGMAN: I have asked for the facts	17 (French), which I presume in the United States would
18 that he learned from Ms. Moutte. How is that	18 be the district attorney. But I am not sure about
19 privileged?	19 that.
20 MR. BUTLER: Can I hear that question	20 Q Prosecutorial government actor?
21 again?	21 A Yes.
22 (Court reporter read back.)	Q Do you know whether Mr. Albert was
23 MR. BUTLER: With the clarification that	23 involved as an inspection officer during the time
24 the question is do you remember what factual can	24 that the Madoff fraud was discovered in 2008?
25 you relay what factual information she communicated,	25 A Yes.

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49	51		
1 Q Was Mr. Albert strike that.	1 are you referring to the first question mentioned		
2 Can you tell me the factual information	2 Q I am just asking		
3 that you learned by speaking with Mr. Albert in	3 A in the examination or		
4 preparation for today's deposition?	4 Q I am just picking up on the answer		
5 A Yes. Mr. Albert, he confirmed to	5 you just gave, which is that the legal department		
6 us that he has seized physical documents, he has	6 took copies of the subscription and redemption		
7 identified physical documents and has stored them in	7 orders relating to the Fairfield funds when it		
8 a safe place in the archives of the inspection	8 received the summons and notification.		
9 department.	9 A Shortly after that.		
10 Q Do you know which physical	10 Q So I am asking do you recall when		
11 documents Mr. Albert is referring to?	11 that was.		
12 A Yes. These are the physical	MR. BUTLER: The problem is that he		
13 binders in relation to Rafale, Blue Star, basically	13 described two different events. He is asking you		
14 the feeder funds I have just mentioned to you to	14 which event are you asking about. Two things		
15 which the bank had its main exposure at the time we	15 happened.		
16 discovered the Madoff fraud.	16 BY MR. FLUGMAN:		
17 Q Do you know whether the physical	17 Q Let me break it down. When did,		
18 documents that Mr. Albert seized or took possession	18 in your recollection, BIL receive the summons and		
19 of included documents relating to the Fairfield	19 notice relating to the lawsuit involving the		
20 funds?	20 Fairfield funds in the United States?		
A I know that that is not the case.	21 A It was August 30, 2010.		
Q He did not take documents related	22 Q Do I understand your testimony to		
23 to the Fairfield funds?	23 be that after that point in time, somebody from the		
24 A Correct.	24 legal department collected physical copies of the		
Q Do you know when Mr. Albert took	25 subscription and redemption orders relating to the		
50	52		
1 the physical documents relating to the other funds	1 Fairfield funds?		
2 that you mentioned?	2 A Made copies, yes, that is correct.		
A Shortly after the discovery of the	3 Q Was that the first time that		
4 Madoff fraud, so that would have been in early 2009.	4 somebody in the bank had collected information		
5 Q Okay. And you mentioned physical	5 relating to the Fairfield funds?		
6 documents. Do you know whether Mr. Albert took	6 A That is correct. To the best of		
7 possession of any electronic documents at that time?	7 my knowledge, yes.		
Q A I know he didn't	8 Q To be clear, it didn't the bank		
9 Q He did not?	9 did not collect any information relating to the		
10 A He did not. Sorry.	10 Fairfield funds in early 2009 when it collected		
11 Q Do you know whether anybody took	11 information about the other four funds that you		
12 possession of physical documents relating to the	12 mentioned earlier?		
13 Fairfield funds after the discovery of the Madoff	13 A Correct.		
14 fraud?	14 Q Going back to your list of people,		
15 A At a certain point in time, the	15 William Goehry, can you tell me please what		
16 legal department took copies of the subscription and	16 Mr. Goehry's role at the bank is?		
17 redemption orders in relation to the Fairfield	17 A He is heading inspection		
18 funds.	18 department, so he is the team head. He is the boss,		
19 Q Do you recall when that was?	19 basically, of Michelle Albert.		
20 A It was shortly after we have	20 Q And did you strike that.		
71 received the summons with notice so the that we			
21 received the summons with notice, so the that we	What factual information did you learn		
22 were we received the notification by the	What factual information did you learn 22 relating to your deposition testimony today from		
22 were we received the notification by the 23 liquidator of Fairfield.	21 What factual information did you learn 22 relating to your deposition testimony today from 23 Mr. Goehry?		
22 were we received the notification by the	What factual information did you learn 22 relating to your deposition testimony today from		

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witness. It is a little bit difficult because he	1 MR. BUTLER: With that clarification.
2 asked about the discussion with him as opposed to	2 BY MR. FLUGMAN:
3 the factual information. I understand that is one	3 Q Did you discuss with Mr. Vaisse
4 way to do it. But you should not talk about what	4 whether electronically storing information,
5 was discussed during your meeting with Mr. Goehry,	5 including e-mails, was available from the pre-2009
6 but only testify about facts that you may have	6 time frame for certain BIL employees?
7 learned from that meeting, if you can separate the	7 A Yes.
8 facts from the discussion.	8 MR. BUTLER: You can answer that yes or
9 A Okay. Thank you. Well, I didn't	9 no. Very well.
10 learn any facts from that meeting because he was not	10 BY MR. FLUGMAN:
11 working at inspection department at the time when	11 Q Do you recall which BIL employees
12 they were involved in the collection of these	12 you discussed with Mr. Vaisse?
13 physical documents.	13 A Mainly Maria Totaro, previously
14 BY MR. FLUGMAN:	14 mentioned, and Marie-Anne Salentiny.
15 Q Okay. Mr. Vaisse, the next	15 Q Does BIL have electronically
16 person, what is his role?	16 stored information, including e-mails, for either
17 A He is the head of data protection,	17 Ms. Salentiny or Ms. Totaro, from the pre-2009 time
18 rule team. He is heading a small team, two or three	18 frame?
19 persons, making sure that the bank is aligned with	19 A No.
20 the GDPR, global data protection rules.	20 Q Do you recall discussing any other
21 Q Do his responsibilities extend	21 current or former BIL employees' electronically
22 beyond GDPR, in your understanding?	22 stored information with Mr. Vaisse?
23 A To the best of my knowledge, no.	23 A I'm sorry, could you repeat the
Q Same question, if you can tell me	24 question, please?
25 any facts relevant to your testimony here today that	25 Q Let me phrase it a different way.
54	56
1 you learned from your discussions with Mr. Vaisse in	1 Besides Ms. Salentiny and Ms. Totaro, were there any
2 preparation?	2 other former or current BIL employees that you
3 A Well, the factual information we	discussed with Mr. Vaisse?
4 wanted to get from him is in relation to	4 A Yes.
5 electronically available e-mails from certain	5 Q Which employees?
6 employees, BIL employees, existing or former BIL	6 A Marie Claire Meyers and Gianni
7 employees. That was the the main purpose or main	7 Baldinucci.
8 goal of the discussion.	8 Q Did you inquire about the
9 Q So I understand it, is what you	9 availability of electronically stored information,
10 are saying that you spoke with Mr. Vaisse about	10 including e-mails, for Mr. Baldinucci and Marie
11 whether electronically stored information, including	11 Claire Meyers
12 e-mails, were available from certain BIL employees,	12 A Meyers, let me spell it.
13 current and former, from the pre-2009 time frame?	13 M-E-Y-E-R-S.
=	
14 MR. BUTLER: Can I get that question	 14 I'm sorry, could you repeat. 15 Q Yes. Did you inquire about
15 again.	, ,
16 (Court reporter read back.) MP. PLITEP: That is gotting kind of	16 whether electronically stored information, including
17 MR. BUTLER: That is getting kind of	17 e-mails, is available to BIL from Mr. Baldinucci and
18 specific about what exactly he discussed with	18 Ms. Meyers from the pre-2009 time frame?
19 Mr. Vaisse. You can answer generally what the topic	19 A Yes, we did inquire.
20 of discussion was with Mr. Vaisse, but we are not	Q Does BIL have access to any
21 going to go into exactly what was said during that	21 electronically stored information from Ms. Meyers or
22 conversation.	22 Mr. Baldinucci from pre-2009?
23 BY MR. FLUGMAN:	23 A No.
Q Do you need me to repeat the	Q We spoke about Ms. Totaro, you
25 question?	25 indicated that you spoke to her in connection with
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1 preparation for the deposition. First, what is	1 you know that information you can answer.
2 Ms. Totaro's role at the bank?	2 A I don't know.
3 A At the time when the facts	3 BY MR. FLUGMAN:
4 occurred in relation to the actions, and even today,	4 Q Did you strike that.
5 she's working in the execution desk of the trading	5 Ms. Totaro had access to e-mail during the
6 markets.	6 pre-2009 period, correct?
7 Q Could you describe what that	7 A Correct.
8 means?	8 Q Do you have any reason to believe
9 A Basically her role, or the role	9 that she didn't use e-mail in the course of her job
10 generally of the execution desk, is that they	10 functions at BIL during that time period?
11 they prepare the redemption and the subscription	11 A I have no reason to believe that
12 orders in relation to the transfer agents.	12 she did not use it.
13 Q Do you understand that Ms. Totaro	13 Q And just to be clear, you spoke
14 was involved in the subscription and redemption in	14 with Ms. Totaro in preparation for the deposition
15 the Fairfield fund that is at issue here?	15 today, and following that conversation you don't
16 A Yes.	16 know whether she used e-mail to communicate with
17 Q Did you speak with Ms. Totaro	17 respect to the Fairfield funds?
18 about whether she used e-mail to communicate in	18 A That is correct.
19 relation to the subscriptions and redemptions at	19 Q Do you know whether she used
20 issue here?	20 e-mail to communicate with respect to the specific
21 MR. BUTLER: Again, hold on. I object and	21 subscription and redemption at issue in this case?
22 instruct the witness not to answer. You are going	22 A I don't know.
23 into the discussion as opposed to just asking a	Q Was part of Ms. Totaro's job
24 factual question. If you ask the factual question	24 function to communicate with people outside the
25 we can get past my objection.	25 bank?
58	60
1 BY MR. FLUGMAN:	1 A Yes.
2 Q Sure. With that clarification,	2 Q And was part of Ms. Totaro's job
3 did Ms. Totaro use e-mail to communicate with	3 function with respect to the Fairfield funds, and
4 respect to investments in the Fairfield funds?	4 the specific redemption and subscription at issue in
5 A Trade confirmations were done on	5 this case, to communicate with Citco?
6 paper, everything was done on paper, which was	6 MR. BUTLER: Again, I'll object that's
7 scanned afterwards into physical binders, copies.	7 outside the scope. It's a very specific question.
8 And there were some internal e-mail exchanges as	8 You can answer.
9 well, yes.	9 MR. FLUGMAN: Disagree, but we can take
10 And so I'm sorry, could you strike	10 that up later.
11 that, please? Sorry.	11 BY MR. FLUGMAN:
MR. BUTLER: Let me just state for the	12 Q If you know the answer to the
13 record, I didn't want to interrupt the witness'	13 question, please answer.
14 answer, but I think that falls outside the scope of	14 A I don't know.
15 these topics. He is not testifying as a spokesman	MR. BUTLER: Which topic are you on at
	MR. BUTLER: Which topic are you on at
16 for the bank on sort of what happened when the	16 this point?
1 7 7 7	1 .
16 for the bank on sort of what happened when the	16 this point?
16 for the bank on sort of what happened when the 17 redemption was made, but, you know, you can ask his	16 this point? 17 MR. FLUGMAN: I think it relates to 6.
16 for the bank on sort of what happened when the 17 redemption was made, but, you know, you can ask his 18 memory or his knowledge.	16 this point? 17 MR. FLUGMAN: I think it relates to 6. 18 But in any case, we have the witness' answer. We
16 for the bank on sort of what happened when the 17 redemption was made, but, you know, you can ask his 18 memory or his knowledge. 19 BY MR. FLUGMAN: 20 Q We can figure that out later.	16 this point? 17 MR. FLUGMAN: I think it relates to 6. 18 But in any case, we have the witness' answer. We 19 can continue. 20 BY MR. FLUGMAN:
16 for the bank on sort of what happened when the 17 redemption was made, but, you know, you can ask his 18 memory or his knowledge. 19 BY MR. FLUGMAN: 20 Q We can figure that out later. 21 What I want to know, and I think you said yes, is,	16 this point? 17 MR. FLUGMAN: I think it relates to 6. 18 But in any case, we have the witness' answer. We 19 can continue. 20 BY MR. FLUGMAN: 21 Q You also indicated you spoke with
16 for the bank on sort of what happened when the 17 redemption was made, but, you know, you can ask his 18 memory or his knowledge. 19 BY MR. FLUGMAN: 20 Q We can figure that out later. 21 What I want to know, and I think you said yes, is, 22 did Ms. Totaro use e-mail to communicate with	16 this point? 17 MR. FLUGMAN: I think it relates to 6. 18 But in any case, we have the witness' answer. We 19 can continue. 20 BY MR. FLUGMAN: 21 Q You also indicated you spoke with 22 Ms. Salentiny?
16 for the bank on sort of what happened when the 17 redemption was made, but, you know, you can ask his 18 memory or his knowledge. 19 BY MR. FLUGMAN: 20 Q We can figure that out later. 21 What I want to know, and I think you said yes, is, 22 did Ms. Totaro use e-mail to communicate with 23 respect to investments in the Fairfield funds?	16 this point? 17 MR. FLUGMAN: I think it relates to 6. 18 But in any case, we have the witness' answer. We 19 can continue. 20 BY MR. FLUGMAN: 21 Q You also indicated you spoke with 22 Ms. Salentiny? 23 A Correct.
16 for the bank on sort of what happened when the 17 redemption was made, but, you know, you can ask his 18 memory or his knowledge. 19 BY MR. FLUGMAN: 20 Q We can figure that out later. 21 What I want to know, and I think you said yes, is, 22 did Ms. Totaro use e-mail to communicate with	16 this point? 17 MR. FLUGMAN: I think it relates to 6. 18 But in any case, we have the witness' answer. We 19 can continue. 20 BY MR. FLUGMAN: 21 Q You also indicated you spoke with 22 Ms. Salentiny?

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61	1 in propagation for today's deposition. I believe
1 A Today she is working in	1 in preparation for today's deposition. I believe
2 administration function, which is called Kes, but at	2 everyone we have covered so far is a current BIL
3 the time she was also at the time of the relevant	3 employee. But you also mentioned that you spoke
4 facts at hand, in relation to the action, she was	4 with some former BIL employees. Could you please
5 also working at the transaction desk, execution	5 give me the list of those people.
6 desk. So she was at the time a colleague of Maria	6 A Yes. I have spoken to Mary Claire
7 Totaro.	7 Meyers, Johnny Baldinucci and Benny Reiter, but
8 Q Were her job functions at the	8 Benny is his nickname, do you say that?
9 time and by to put some more specificity on	9 Q Yes.
10 it, 2005 to 2008 similar to the ones that you	10 A His official name is Gannot, so
11 described with respect to Ms. Totaro?	11 spelled G-A-N-N-O-T, I think so.
12 A I think so, yes.	12 Q Anyone else besides those three
13 Q Did Ms. Salentiny have access to	13 individuals?
14 e-mail during that time period?	14 A As being former BIL employees, no.
15 A Yes.	15 Q Is there anyone else that you
16 Q Did Ms. Salentiny communicate	16 spoke to besides the seven people who are current
17 internally or externally with respect to the	17 BIL employees and three former employees that you
18 Fairfield funds by e-mail?	18 just mentioned, other than counsel, with respect to
19 A To the best of my knowledge I	19 your preparation today?
20 don't have the answer to that question.	20 A Yes.
21 Q How long roughly did you speak	Q Who are those people?
22 with Ms. Salentiny in preparation for the	22 A Two employees from Kyndryl. And
23 deposition?	23 Kyndryl, you spell that K-Y-N-D-R-Y-L.
24 A Roughly it would be around 30	Q Do you remember those individuals'
25 minutes.	25 names?
62	64
1 Q Sitting here today you don't have	1 A Yes. Malcolm Holm and Christoph
2 any reason to doubt that she would have used e-mail,	2 Pelletot. Pelletot, you would spell that like
3 correct?	3 P-E-L-L-E-T-O-T, if my memory is correct.
4 A I I don't know.	4 Q What role does Kyndryl play with
5 Q Okay.	5 respect to BIL?
6 A I don't know.	6 A Kyndryl is basically it's a
7 Q If that is your answer, then we	7 spin-off of IBM. And Kyndryl is taking care of
8 will move on.	8 BIL's e-mail servers.
9 MR. BUTLER: David, would this be a good	9 Q How long has Kyndryl provided that
10 time for a break? We have been going for almost an	10 service to BIL?
11 hour and a half now.	11 A I don't have the exact date
MR. FLUGMAN: Happy to take a break.	12 basically I don't have that information. But as
MR. BUTLER: If you're in the middle of	13 long as I am aware of and working for the bank, IBM,
14 something I don't want to interrupt you.	14 later on Kyndryl, always has been the service
15 MR. FLUGMAN: I was just about to ask	15 provider to the bank.
16 this is a good time for a break.	16 Q Is that true before 2009, that
17 THE VIDEOGRAPHER: Going off the record.	17 either IBM or Kyndryl was providing this service to
18 The time is 10:58 a.m.	18 BIL?
19 (Off the record.)	19 A I don't have the exact
THE VIDEOGRAPHER: We are back on the	20 information, so I cannot confirm or infirm that, do
21 record. The time is 11:10 a.m.	21 you say that, infirm? No?
22	22 Q I am not sure what you mean by
23 BY MR. FLUGMAN:	23 "infirm," but
24 Q Mr. Dewitte, before the break we	24 A I cannot say yes or no.
25 were talking about individuals with whom you spoke	25 Q Infer, perhaps?
	120 V mier, pernaps;

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65	67
1 A Infer?	1 Q I will have a couple questions.
Q I don't want to put words in your	2 But let me ask first about the mail journaling
3 mouth. When you say provides services to BIL, can	3 service that you mentioned. Can you describe the
4 you tell me at a general level what services Kyndryl	4 process by which that mail journaling process
5 provides?	5 occurred?
6 A Well, in relation to the e-mail	6 A Could you please define "process"?
7 inboxes of employees, they host the server, I think	7 Q Sure. Yes. What is involved in
8 so. And they manage the e-mail service of	8 the mail journaling? What sorts what e-mails are
9 employees.	9 journaled as part of the process that you described
10 Q Do you know whether Kyndryl or IBM	10 a moment ago that Kyndryl provides for the bank?
11 provided that service before 2009 for BIL?	11 A Okay. According to my
12 A I don't have that level of	12 understanding, following the discussion we had with
13 information.	13 them, and afterwards this was drafted in an e-mail,
14 Q Did you speak with Mr. Holm and	14 otherwise because it is quite technical
15 Mr. Pelletot separately or together?	15 information. They confirmed that this relates to
16 A Spoke with them together, with	16 incoming and outgoing external e-mail traffic, so
17 yeah, we spoke with them together.	17 incoming e-mails and outgoing e-mails.
18 Q When did that conversation take	18 Q As I understand it, if an e-mail
19 place?	19 was sent to somebody by a BIL employee to somebody
20 A Couple weeks ago, before the	20 outside the bank
21 before today.	21 A Exactly.
Q Was that conversation the only	22 Q that e-mail would be captured
23 conversation that you had with Mr. Holm and	23 by the journal?
24 Mr. Pelletot about the subject matter of today's	24 A Correct. That is my
25 deposition?	25 understanding.
66	68
1 A That was the only conversation.	1 Q And the same would apply to an
2 There were some to be exhaustive, there were some	2 inbound e-mail from someone external e-mailing
3 e-mail exchanges afterwards, yes.	3 someone within the bank?
4 Q What facts did you learn from	4 A That is my understanding as well,
5 speaking with Mr. Holm and Mr. Pelletot with respect	5 yes.
6 to today's deposition?	6 Q Is it your understanding that that
7 A Well, the facts we learned is that	7 journaling would take place automatically?
8 Kyndryl provides two specific services to the bank,	8 A Automatically meaning
9 which is important for the case at hand. The first	9 Q Meaning that the individual BIL
10 one is the mail journaling server and the second one	10 employee who sent or received that e-mail, did they
11 is the exchange server.	11 need to take any additional steps to have that
So, the mail journaling server, that	12 e-mail journaled, or was it an automatic function?
13 relates to incoming and outgoing external mail	A According to my understanding, it
14 traffic for BIL employees from ten years ago until	14 is an automatic function.
15 now. So this is the service they are providing	15 Q And I believe you said that the
16 today.	16 journaling was kept for ten years?
And the second one is in relation to the	17 A That is correct, yes.
18 exchange server, which means active mailboxes for	18 Q Do you know whether Kyndryl was
19 existing employees or for disconnected mailboxes;	19 providing this service to the bank in 2018?
20 so, in other words, employees who left the bank six	20 A That is information that I didn't
21 months until six months ago. I don't know if	21 check. To the best of my knowledge, I think so.
22 that is clear. So, they are able to retrieve active	Q Okay. I guess I have the same
23 mailboxes of existing employees or former employees	23 question with respect to 2015. Do you think that
24 to the extent that they only have left six months	1774 K yndryl wae providing - etrika that
25 ago. Is that clear enough?	 24 Kyndryl was providing strike that. 25 Do you know whether Kyndryl provided mail

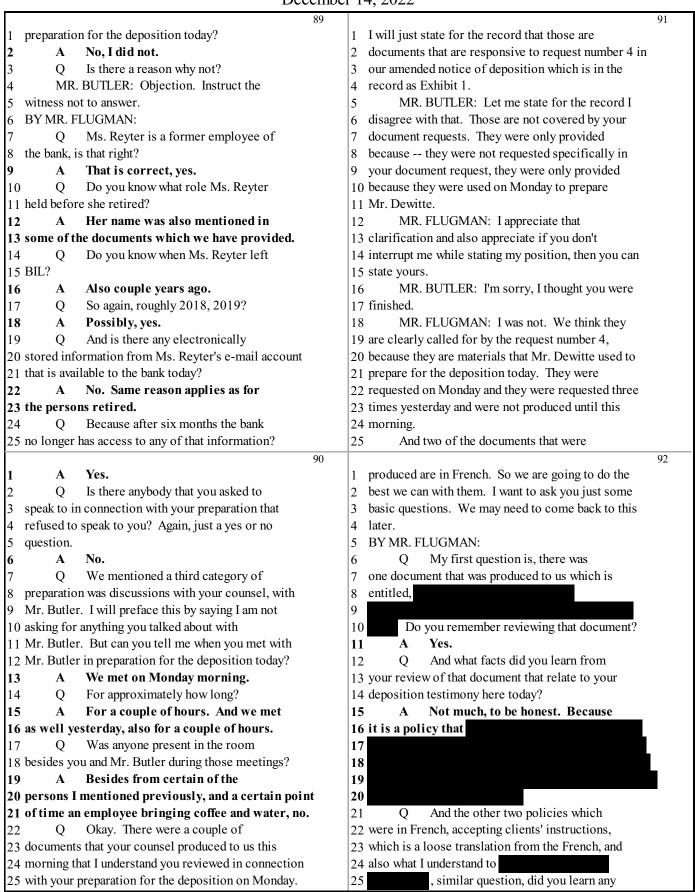
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1 journaling services to BIL in 2015?	1 A Relationship manager holds the
2 A I have the same reply for you as I	2 direct contact with the clients, meaning the
3 provided previously. It is not a specific answer	3 ultimate clients of the bank, not the internal
4 question. It is not a specific question we phrased.	4 clients, but the ultimate clients; being the account
5 But according to my understanding, as they have been	5 holders and/or the beneficial owners, in case the
6 providing working with them for as long as I	6 account holder would be a legal entity.
7 know, should be.	7 Q Do I understand that she would be
8 Q Just to be clear, you have been at	8 communicating with people outside of BIL as part of
9 the bank since 2002, correct?	9 her job?
10 A Exactly.	10 A That is correct, yes.
11 Q In your experience, either Kyndryl	11 Q And the people with whom she would
12 or IBM was providing this type of service to the	12 be communicating would be customers of the bank?
13 bank throughout your tenure?	13 A Exactly.
14 A This is the first as I told you	14 Q Those customers would include
15 before, I was never involved in any litigation. So,	15 entities or individuals that worked with investment
16 it is the first time that I need to check this	16 professionals at the bank to make investments in
17 information. So	17 funds and stocks and the things you mentioned
18 Q Okay. That is fair. And again,	18 earlier?
19 the journaling, as you understand it, was kept for	19 A Yes, with a little nuance, if you
20 ten years, correct?	20 say that in English, that Marie-Claire Meyers was a
21 A Yes. And only ten years.	21 member of the wealth management business line, and
22 Q So in assuming Kyndryl was	22 they only have contact with private clients, meaning
23 providing services to BIL in 2015, Kyndryl should	23 that they do not have any or not supposed to have
24 have had a record of all e-mails sent externally and	24 any contacts or direct contacts with, let's say,
25 received from outside the bank dating back to 2005,	25 investment managers or yes, institutional
70	72
1-	1 counterparts.
2 A If your assumption is correct, 3 then your deduction is correct as well. I follow	2 Q So would Ms. Meyers communicate 3 with anyone internal? Who in the bank would
I	l
I	4 Ms. Meyers communicate with in respect to her job? 5 A All sorts of departments and
So the answer would be yes to my 6 question?	
7 A The answer would be yes to your	6 people. It is their job is well, their main 7 point of contact externally is the end client, of
l	8 course, then they have to liaise internally with
8 question. 9 Q And the same thing in 2018,	9 different other departments to make sure that the
10 assuming Kyndryl was providing e-mail journaling	10 end client is being serviced.
11 services to BIL, there would be a journal of all	11 For instance, in case a client wants to
12 e-mails external from the bank and internal to the	12 make an investment, she has to liaise with the
13 bank that existed back to 2008?	13 relationship manager, doesn't matter whether it is
14 MR. BUTLER: Objection to form. You can	14 Marie-Claire Meyers or somebody else, but the
15 answer the question.	15 relationship manager has to liaise with the
16 A Yes.	16 professionals or the other employees having this
17 BY MR. FLUGMAN:	17 specific competence.
18 Q Turning to the other individuals	18 Q Sir, do you understand that
19 that you mentioned, Ms. Meyers, Marie-Claire	19 Ms. Meyers was involved in the subscription and
20 A Yes.	20 redemption that's at issue in this case?
21 Q what was her function at the	21 A I understand, yes.
22 bank before she retired?	22 Q And that she is one of the
23 A Relationship manager.	23 individuals that BIL has disclosed to the
24 Q Can you briefly describe what	
	1/4 Huuldalofs as having relevant information with
25 would be entailed in that position?	24 liquidators as having relevant information with 25 respect to this case?

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73	75
1 A I understand, yes.	1 A Yes. The question you told me, do
2 Q And in as part of her job, you	2 you understand. So I agree and understand.
3 would expect Ms. Meyers to have had communications	Q Do you understand do you have
4 with people outside the bank?	4 an independent basis that you know that those are
5 A Absolutely, yes.	5 the correct dates?
6 Q That would include the underlying	6 MR. BUTLER: Are you asking him was he
7 client who subscribed and redeemed for shares in	7 involved in those events or
8 Fairfield that is at issue in this case?	8 MR. FLUGMAN: I'm asking if he knows that
9 A That is correct, yes.	9 the subscription that is at issue in this case
10 Q Did Ms. Meyers use e-mail to	10 occurred in 2005, and that the redemption that
11 communicate with her clients at that time, at the	11 occurred that is at issue in this case occurred in
12 relevant time frame, 2005 to 2008?	12 2007.
13 A Yes, she did. Can I not	13 A In preparation of the of this
14 rephrase, but bring an additional piece of	14 deposition, I reviewed certain internal legal files,
15 information? Before the break you were also asking	15 or internal files in the legal department, and part
16 questions in relation to I don't remember if it	16 of that were the subscription and redemption forms,
17 was Maria Totaro or Marie-Anne Salentiny, whether	17 which have been produced, as well as the account
18 they used e-mails externally.	18 statements of the client, of the underlying client.
19 And I was hesitating. The reason why was	19 BY MR. FLUGMAN:
20 that when I started to work at the bank, mainly for	20 Q Just to be clear, I think we are
21 banking secrecy reasons not everybody had access to	21 on the same page, but do you agree with me that the
22 send e-mails outside of the bank. Because well,	22 subscription that is at issue here was made in 2005
23 Article 41 of the law of '93 in relation to banking	23 and the redemption that is at issue here in this
24 secrecy is something important for Luxembourg	24 case was made in 2007?
25 professionals. This is the reason why I was	25 A I agree with you.
74	25 A Tagree with you.
1 hesitating at the time, just for your information.	1 Q So my question is and you
2 Q And did you speak with counsel	2 already told me that Ms. Meyers communicated with
3 about that correction during the break;	3 the underlying client by e-mail with respect to
4 clarification, I should say?	4 those two events, the subscription in 2005 and the
5 MR. BUTLER: I will object to the question	5 redemption in 2007.
6 about discussion with counsel during the break. You	6 MR. BUTLER: Objection to form. You can
7 can answer that yes or no as a general topic.	7 answer.
o A Vos	8 A The subscription, yes. We have a
9 BY MR. FLUGMAN:	9 copy of these e-mail exchanges. And the redemption,
10 Q Okay. Thank you. I appreciate	10 I don't recall.
11 the clarification. We will get back to that in a	11 BY MR. FLUGMAN:
12 moment.	12 Q The copy that you referred to,
13 I want to go back to Ms. Meyers and her	13 that is a hard copy, paper copy, correct?
14 e-mail communications with the underlying client who	14 A Correct, yes.
15 subscribed for and redeemed shares in the Fairfield	_
16 funds at issue in this case. Do you agree with me	• * * * * * * * * * * * * * * * * * * *
17 that the subscription that was made in the Fairfield	16 least on the subscription side that was sent between 17 Ms. Meyers and the customer, that would have been an
<u> </u>	· · · · · · · · · · · · · · · · · · ·
18 funds that relates to the redemption at issue in	18 e-mail that was external to the bank, correct?
19 this case occurred in 2005?	19 A Correct, yes.
20 A I agree.	20 Q And so that e-mail, assuming that
21 Q Do you also understand that the	21 Kyndryl or IBM was providing the mail journaling
22 redemption for that underlying client occurred in	22 services you described earlier in 2005, would have
23 2007?	23 existed on the journaling platform until 2015, would
24 A I understand.	24 you agree with me?
Q Do you agree with me?	25 A I agree with you.

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77	79
1 Q If Ms. Meyers had communicated	1 Q Let's start with the general
2 with the external customer at the time of redemption	2 question and then we can go to the specific.
3 in 2007, that e-mail would have resided on the mail	3 A Mr. Baldinucci, when I told him
4 journaling platform until 2017, would you agree with	4 the name of the client, initially he told me he
5 me?	5 didn't know the name of the client. He was not
6 A Yes.	6 aware; after which I called Marie Claire Meyers.
7 Q Do you know whether Ms. Meyers had	7 Because the name of the client, the account holder
8 communications with other external parties relating	8 is a legal entity, and so the name of the legal
9 to the subscription and redemption at issue in this	9 entity did not ring a bell.
10 case?	10 For banking secrecy reasons, of course, I
11 A I am not aware of that	11 don't know. I didn't check to what extent he was
12 information.	12 entitled to have this information, but for banking
13 Q Do you know whether she ever	13 secrecy reasons, I did not give the name of the
14 communicated with Citco, the funds administrator?	14 ultimate beneficial owner.
15 A Marie-Claire Meyers, I don't have	15 When I called afterwards Marie Claire
16 that information.	16 Meyers, she told me that Mr. Baldinucci, he met and
17 Q Okay. Do you know whether she	17 he had contact with the client on an occasional
18 communicated with anybody at Fairfield Greenwich	18 basis. So I called again Mr. Baldinucci, and then I
19 Group, the funds investment manager, with respect to	19 gave the name of the beneficial owner and he
20 the subscription and redemption at issue here?	20 confirmed that he did he had some occasional
21 A I don't have that information	21 contacts with the client. But he was not managing
22 either.	22 the relationship of the accounts.
23 Q How long did you speak with	Q How did Mr. Baldinucci have
24 Ms. Meyers in preparation for the deposition today?	24 contact with the underlying client, with in-person
25 MR. BUTLER: Object to the form of the	25 meetings, phone calls, e-mails, do you know?
78	1 A Phone cells and he told me
1 question. You can answer.	1 A Phone calls, and he told me
 question. You can answer. A I didn't meet her in person, it 	1 A Phone calls, and he told me 2 that
 question. You can answer. A I didn't meet her in person, it was on the phone, 15, 20 minutes roughly. 	1 A Phone calls, and he told me 2 that 3 MR. BUTLER: I know it is hard to do. Try
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1 BY MR. FLUGMAN:	83
	1 A Well, basically, Mr. Reiter's role
2 Q The question is specifically did	2 as being a member of the back office, their role is
3 he use e-mail to communicate with the underlying	3 to make sure that the trade is appropriately being
4 client we have been discussing?	4 booked in the system of the bank, first of all.
5 A I don't have that information.	5 Secondly, they keep also in their archives
6 MR. BUTLER: I'll just say for the record,	6 the physical binders, the physical documents. It is
7 I know there is a very general topic 6 on document	7 also Benny Reiter who handed over the redemption and
8 retention and destruction, but it does not seek	8 subscription files.
9 information on this level of detail. Accordingly,	9 Q In the course of Mr. Reiter's
10 Mr. Dewitte knows the information and I'm happy to	10 responsibilities at the bank, did he communicate
11 let him answer the questions about things that he	11 externally with anybody?
12 knows, but he has not been prepared to convey all	12 A I don't have that information.
13 the information about what Mr. Baldinucci knows or	13 Q He did communicate internally with
14 what Ms. Meyers may know. I just want to state that	14 people like Ms. Meyers, Mr. Baldinucci and others,
15 for the record.	15 is that correct?
MR. FLUGMAN: And I will state for the	16 A That is correct, yes.
17 record that I think the e-mail practices and use of	17 Q Do you know whether those
18 the six custodians that were disclosed in the Rule	18 communications took place over e-mail?
19 26A disclosures is at the heart of what we are	19 A Yes. Internal, yes.
20 talking about. We don't have to agree on that here,	20 Q Yes, they did take place over
21 we can take that up later. I appreciate	21 e-mail?
22 Mr. Dewitte's	22 A Yes, they did take place over
23 MR. BUTLER: I just want it to be clear	23 e-mail.
24 that he hasn't been prepared to talk about this	24 Q That is true for time frame before
25 level of detail as a representative of the bank.	25 2009?
82	84
1 But he does have information that I am happy to	1 A I don't have that information. I
2 allow him to provide to you.	2 know I communicated with him through e-mail also
3 BY MR. FLUGMAN:	3 after 2009.
4 Q Do you know, did Mr. Baldinucci	4 Q Do you have any reason to doubt
5 use e-mail to communicate with others in the bank	5 that Mr. Reiter didn't use e-mail to communicate
6 during the time period 2005 to 2008?	6 internally in the bank in the 2005, 2008 time frame?
7 A That is not something I checked,	7 A No, I don't have any reason to
8 but I presume so.	8 doubt that.
9 Q You don't have any reason to doubt	9 Q He would be somebody who had
10 that he used it?	10 access to e-mail?
11 A Yes.	11 A Internally, yes; externally, I
12 Q And he would be one of the people	12 don't know.
13 that had access to e-mail at the bank?	Q Going back to the second service
14 A Yes.	14 that you mentioned Kyndryl provided, or IBM
15 Q Finally you mentioned Benny or	15 potentially before that, the exchange service, do I
16 Jeannot Reiter. Please remind me, what was	16 understand correctly that e-mails the exchange
17 Mr. Reiter's role?	17 service they provided hosted the e-mail accounts for
18 A He was working at the back office	18 BIL employees?
19 at the he is also retired today, the three	19 A That is my understanding, yes.
20 persons I mentioned are retired. And he was working	20 Q I believe you said that they
21 at the back office at the time, back office of	21 hosted the active mailboxes and also some former
22 securities, the securities department.	22 employees' accounts, is that correct?
23 Q So with respect to the	23 A That is correct, to the extent for
24 subscription and redemption that's at issue in this	24 the former employees that they have left the bank
124 subscription and reachiption that's at issue in this	

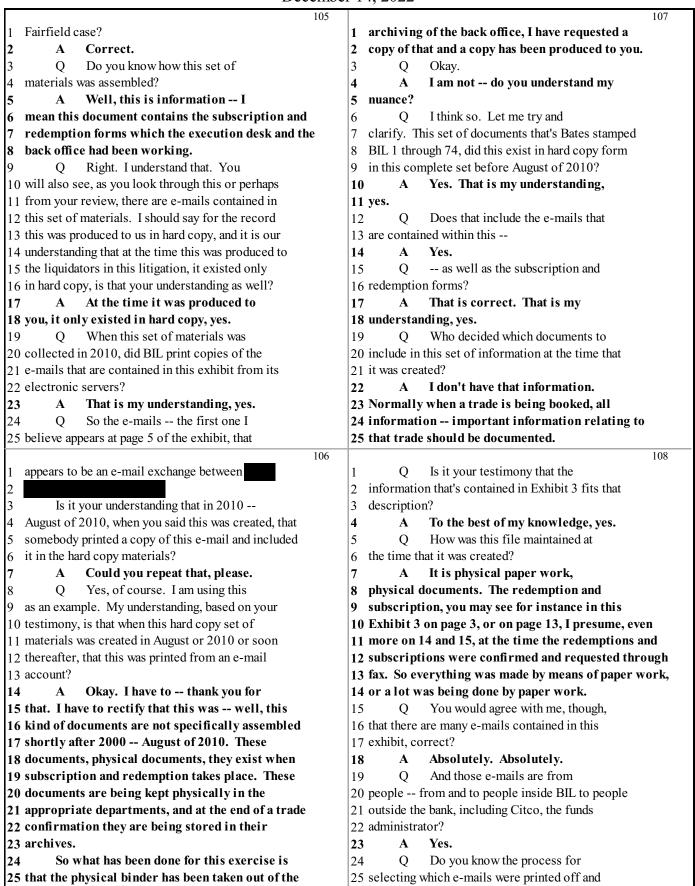
	001 14, 2022
1 Q Do I understand you correctly that	1 after 2009 or 2010?
2 when an employee retires or leaves the bank for	2 A I would say three years, three to
3 whatever reason, the service would keep the last six	3 four years ago.
4 months of e-mails, is that correct?	4 Q So 2018 or 2019?
5 A That is correct, yes.	5 A Roughly, yes.
6 Q Then after that six months, that	6 Q Roughly. Again, her e-mail
7 account would be deleted?	7 account no longer exists because we are more than
8 A Technically, I don't know whether	8 six months after she left the bank, correct?
9 it is deleted or not. In any case, we do not have	9 A Yes.
10 any access anymore. To my understanding, it does	10 Q And sitting here today, the bank
11 not exist anymore, yes.	11 has no ESI available to it from Ms. Meyers?
12 Q Just to be clear, the bank would	12 A Correct.
13 only have access to a retired or former employee's	13 Q The same question with respect to
14 e-mail account for six months after that employee	14 Mr. Baldinucci, right, the bank has no ESI, sitting
15 leaves the bank, correct?	15 here today, relating to Mr. Baldinucci?
16 A That is correct, yes.	16 A As I defined previously, is much
17 Q After that six months, the bank	17 broader than only e-mails. But yes, there are no
18 would no longer have access to the electronically	18 checks have been performed in relation to their
19 stored information in that former employee's	19 e-mail inboxes, but I also have asked to colleagues
20 account, correct?	20 who are still working in the same team if any
21 A That is correct, yes. That has	21 information could be retrieved on common available
22 been confirmed by Kyndryl, yes.	22 servers; so not inboxes, but servers of the
23 Q Mr. Baldinucci is a former	23 department.
24 employee, I think you said, correct?	24 Q And is there information?
25 A That is correct, yes.	25 A No. It is an exercise that is has
86	88
1 Q What year did he leave the bank?	1 been performed
2 A He left the bank mid last year, if	2 Q I understand. I appreciate the
3 my memory is correct.	3 clarification. Just to be clear, sitting here
4 Q Sorry. Mr. Baldinucci retired	4 today, the bank could not access any e-mails sent or
5 from BIL in the middle of 2021, correct?	5 received by Mr. Baldinucci during his tenure at the
6 A Yes. But yes.	6 bank?
7 Q And we are now in December of	7 A Correct.
8 2022, which is certainly more than six years (sic)	8 Q Mr. Reiter, when did he leave the
9 into 2022, are Mr. Baldinucci's e-mails still	9 bank?
10 available to BIL?	10 A Also a couple years ago, same time
11 A Could you repeat the question,	11 period.
12 please?	12 Q Again, 2018, 2019?
13 Q Are Mr. Baldinucci's e-mails still	13 A Yes, roughly speaking. I don't
14 available to BIL today?	14 have the exact dates in mind, but yes.
15 A No.	15 Q Again, sitting here today, his
16 Q Is that because his e-mail account	16 e-mail account is not available to the bank because
17 is it is more than six months after	17 it is more than six months after he left the bank?
18 Mr. Baldinucci left the bank?	18 A Same reason applies as for Gianni
19 A Yes. Yes.	19 Baldinucci and Marie Claire Meyers, yes.
Q Ms. Meyers, also a former	20 Q There is one other person that is
21 employee, do you recall when she left the bank?	21 on that has been disclosed to us as potentially
22 A Already a couple of years ago. It	22 having relevant information in the case, and that's
23 is definitely prior to that six months period we	23 Chantal Reyter?
24 just discussed.	24 A Yes.
25 Q Okay. She left the bank sometime	25 Q Did you speak with Ms. Reyter in

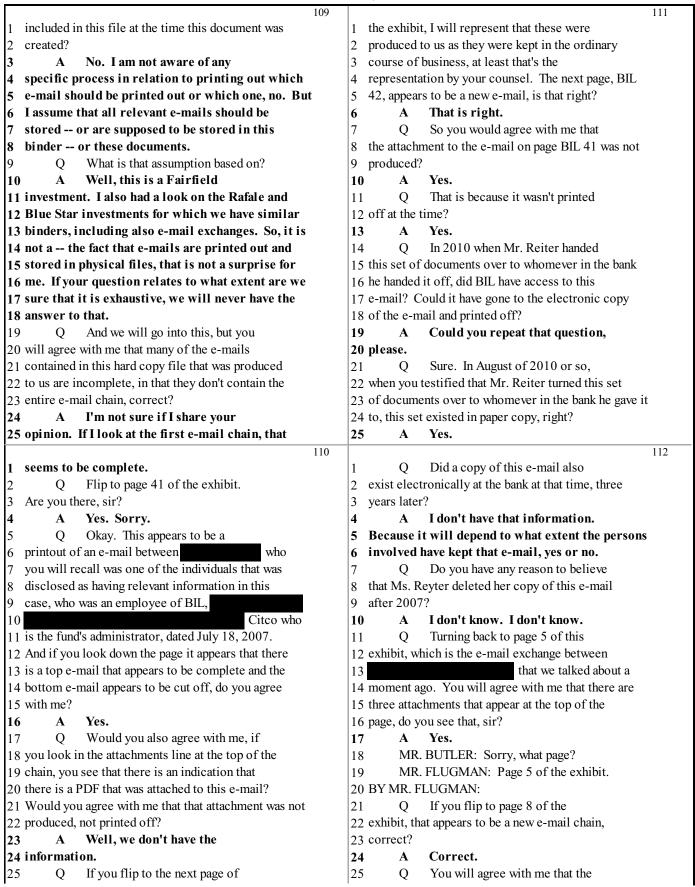


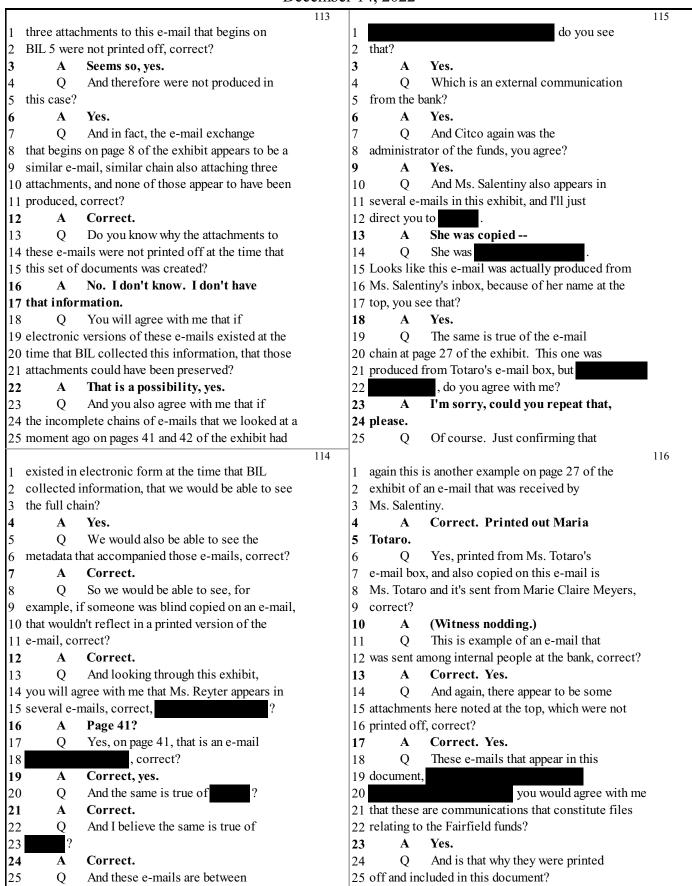
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93	95
1 facts from reviewing those two policies that relate	BIL's information technology department report into
2 to your testimony today?	2 anybody at Dexia Holdings?
3 A Not really, no, not of any	3 A I don't have that level of
4 relevance.	4 information available, neither did I check it. I
5 Q I want to talk a little bit about	5 can assume they did, yes.
6 the structure of BIL. You mentioned earlier that	6 Q Okay. BIL had an integration
7 BIL at one point was a member of the Dexia group,	7 technology group at that time?
8 and I believe you said that BIL was divested or spun	8 A I'm sorry?
9 off from Dexia in roughly 2012, do I understand that	9 Q BIL did have an information
10 correctly.	10 technology group at the time?
11 A That is correct. Dexia sorry,	11 A What do you mean by information
12 BIL has been sold by Dexia in 2012. That is	12 technology?
13 correct, yes.	13 Q A group of people who handled
14 Q Prior to 2012, BIL was part of the	14 electronic information, archiving, storage, that
15 Dexia group?	15 sort of thing.
16 A Correct.	16 A Yes.
17 Q Is that true for the entire time	17 Q All right. I think we discussed
18 period after 2000 until the divestiture in 2012?	18 this, but did BIL at the time period before 2009,
19 A Yes.	19 2000 to 2009, invest on its own behalf or on behalf
20 Q During that time period, did BIL	20 of underlying clients?
21 have a parent company?	21 A Is my understanding correct that
MR. BUTLER: Objection to form. Which	22 you are asking did BIL invest on its own behalf
23 time period are you asking about?	23 or and of its clients?
24 BY MR. FLUGMAN:	24 Q Let me ask a better question. Did
25 Q 2000 to 2012, before the	25 BIL make investments on behalf of underlying clients
94	96
1 divestiture.	1 in funds and similar investment vehicles?
A Are you asking BIL being yes,	A Yes.
3 the parent company was Dexia Holding. You are	Q Were any of BIL's clients on
4 asking for the shareholder	4 behalf on whose behalf it made investments
5 Q Yes, I am asking who the parent	5 located in the United States?
6 company of BIL was.	6 A At that time period?
7 A Of Dexia BIL was Dexia, yes.	Q In the 2000 to 2009 time period,
8 Q Did at that time, did BIL's	8 yes.
9 officers and directors report up into anyone at	9 A It is possible. I don't have that
10 Dexia Holdings?	10 level of information.
11 A That is correct, yes. There was	11 Q Is there any restriction in your
12 a I don't know if you can title it a functional	12 knowledge that would prevent a U.S. investor from
13 reporting.	13 doing business with BIL?
14 Q Okay. Did BIL's legal department	14 A Today it is quite complicated, but
15 report into anyone at Dexia Holdings?	15 at the time, I don't know. Today there is a
16 A Yes.	16 specific rule not to invest in with American
17 Q To whom did the BIL legal	17 clients, yes.
18 department report?	18 Q It is possible that clients at the
19 A It was the secretary general of	19 bank existed in the United States at the pre-2009
20 the Dexia Holding group, his name was at the time	20 time frame?
21 Olivier van Heerstraeten, if my memory is correct.	21 A It is a possibility, which I
22 Sorry, so van Heerstraeten is spelled V-A-N, space,	22 didn't check.
23 and I'm not 100 percent sure, but	Q Okay. I think we may have talked
24 H-E-E-R-S-T-R-A-E-T-E-N.	24 about this, but can you tell me what departments or
25 Q At the relevant time period, did	25 job functions at BIL were responsible for

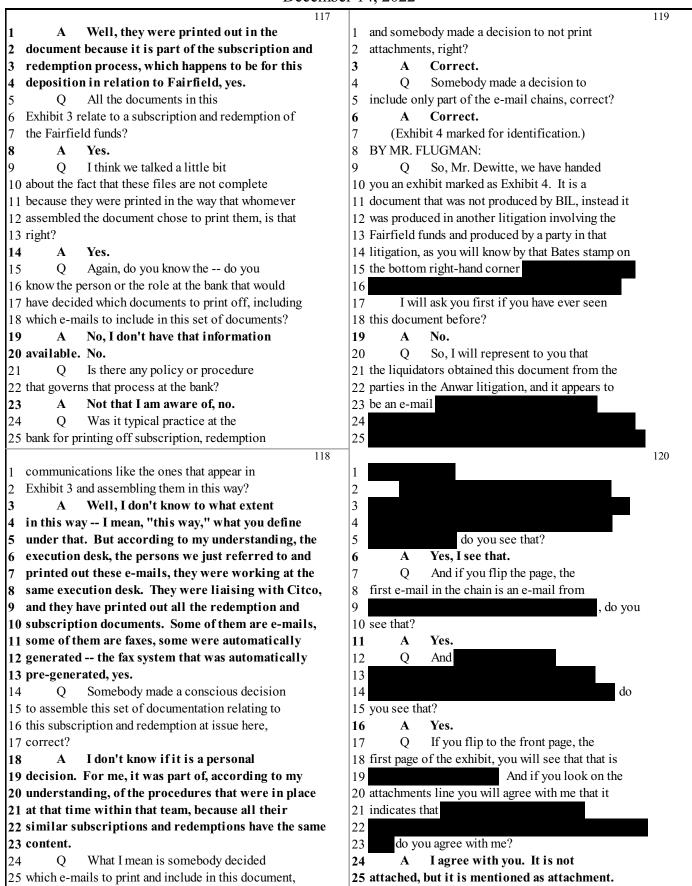
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1 communicating with the clients who were interested	1 the funds administrator, with respect to the
2 in investing in the Fairfield funds?	2 Fairfield investments?
3 A Well, I think it is important to	A In relation to Citco, that would
4 get something straight. Contrary to the feeder	4 be the back offices, in relation to the subscription
5 funds which I named previously, Rafale and Blue Star	5 and the transfer subscription and redemption
6 fund, which bank actively commercialized. BIL never	6 forms, or the execution desk I mentioned earlier
7 actively commercialized Fairfield feeder funds as	7 before, for which Maria Totaro and Marie Anne
8 part of that.	8 Salentiny were working.
9 So we only acted on an execution only	9 Q What departments or people at BIL
10 basis, meaning that it is true that you say it was	10 were responsible for maintaining documents related
11 the bank the investments were made on behalf of	11 to investments in the Fairfield funds?
12 the bank, meaning that technically it is the bank	12 A Your question is quite broad, with
13 that will be mentioned into the shareholder's	
	13 documents in relation to. There can be can you
14 register of the specific funds as a nominee.	14 be more specific or
But, contrary to the other funds, we acted	15 Client-related documentation, the account
16 only in relation to Fairfield feeder funds upon an	16 opening forms of a client who invests in Fairfield,
17 execution only basis, which means that it was never	17 would that be part of
18 on our short list of investment advice. Basically	18 Q Yes. Who would maintain those
19 it was a fund that was picked up by certain clients	19 records?
20 and specifically asked the bank to invest.	20 A Well, all client-related
21 Q I understand that. My question,	21 documentation is being stored internally in a tool
22 though, is, the bank did make investments in	22 that is called Documentum, and you can find that
23 Fairfield on behalf of underlying customers, you	23 name in one of the procedures we have, so there are
24 will agree with me?	24 document archiving procedure, which is the main tool
25 A That is correct, yes.	25 the bank uses to store information in relation to
98	100
1 Q Including the subscription and	1 clients.
2 redemption that is at issue in this case, correct?	2 Q Who determines what documentation
3 A That is correct.	3 goes into the Documentum system?
4 Q And there are also others not at	4 A It is mentioned in the policy.
5 issue in this case where BIL also made investments	5 Q Do you recall independently?
6 in Fairfield.	6 A Yes. Typically account opening
7 A That is correct.	7 forms, the investment profile, to the extent there
8 Q Who in the bank would have	8 is one available, because that depends on I mean,
9 communicated with those underlying clients? What	9 applicable regulation, the transfer orders. So, all
10 types of people, not necessarily specific names.	10 client-related documentation in relation to an
11 A So your question is who was	11 account.
12 liaising with these underlying	MR. FLUGMAN: We have been going for
13 Q Yes.	13 awhile. We will take a short break. Before we do
14 A clients in relation to	14 break, just a couple questions.
15 Fairfield funds?	I see that you have a handwritten piece of
16 Q Yes.	16 paper in front of you that you have been referring
17 A Typically the relationship	17 to through the course of the deposition with respect
18 manager. Because there is nobody of the investment	18 to some names and dates and the like.
19 advice involved, or the discretionary portfolio	19 Q Are you using that piece of paper
20 management involved. So it can only be because	20 in order to aid your testimony here today to be able
21 it is execution only the relationship manager,	21 to remember facts?
1-1-1-2 the terminal primary	
22 who acted upon the request specific request of	
22 who acted upon the request specific request of 23 the clients.	22 A Yes.
23 the clients.	22 A Yes. 23 MR. FLUGMAN: We will ask for a copy of
	22 A Yes.

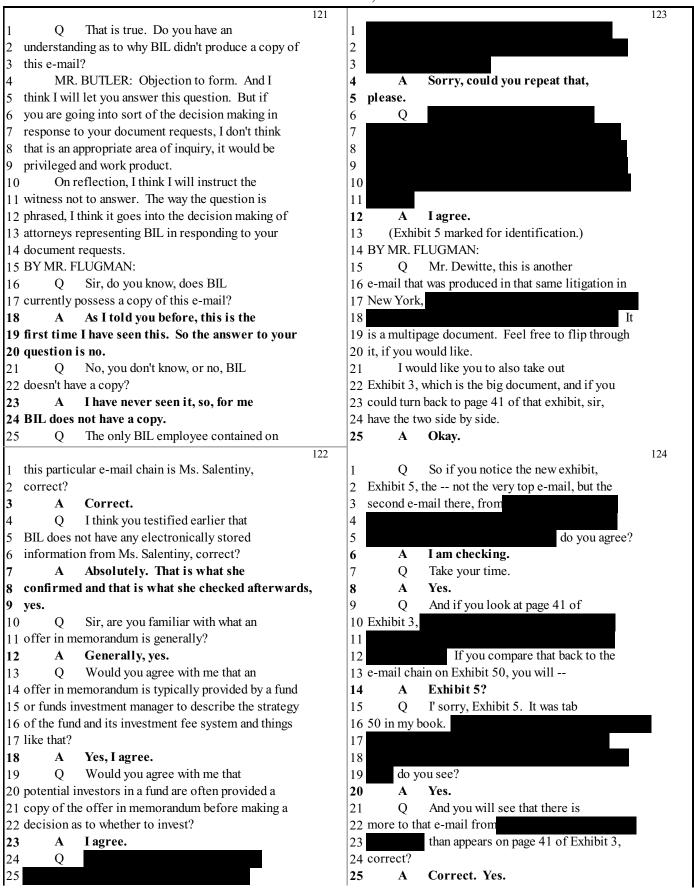
101	1 14, 2022	103
1 MR. BUTLER: Sure. Okay. If you want to	1 Q Okay. I believe we talked about	103
2 make a copy, that is fine.	2 this earlier, but BIL, sitting here today, has no	
3 MR. FLUGMAN: Let's go off the record.	3 e-mails from 2008 and prior, is that right?	
4 THE VIDEOGRAPHER: We're going off the	4 A That is correct.	
5 record. The time is 12:05 p.m.	5 MR. BUTLER: Objection to form. You can	
6 (Off the record.)	6 answer.	
7 THE VIDEOGRAPHER: We are back on the	7 BY MR. FLUGMAN:	
8 record. The time is 12:19 p.m.	8 Q Did you say that was correct?	
9 BY MR. FLUGMAN:	9 A That is correct, yes.	
10 Q Mr. Dewitte, before the break we	10 (Exhibit 3 marked for identification.)	
11 were talking a bit about the Documentum system, I	11 BY MR. FLUGMAN:	
12 believe that is what it was called. Were there	12 Q So, Exhibit 3 is a set of	
13 documents relating to the transaction at issue in	13 documents that was produced to us by the bank in	
14 this case saved to the Documentum system?	14 connection with this litigation. Just to point out,	
15 A No.	15 so you know, at the very bottom right-hand corner	
16 Sorry. Could you rephrase that, please?	16 there is a legend that says BIL with a number, that	
17 Just repeat the question.	17 is called a Bates stamp in American litigation, and	
18 Q I'm happy to ask it again. I	18 that indicates the party that produced the	
19 think you said that there were certain types of	19 information.	
20 documents that were saved to the Documentum system,	20 This is a set of documents that are	
21 and those included account opening statements, and	21 numbered BIL 1 through 74. I am just going to ask	
22 transaction records, is that true as well?	22 you to flip through it, you do not have to look at	
23 A Exactly, yes.	23 every page, but my question is going to be first	
24 Q What I am asking is, did the bank	24 whether you have seen this collection of documents	
25 save documents relating to the subscription and	25 before?	
102		104
1 redemption that's at issue in this case to that	1 A Yes, I did.	10.
2 system at any point?	2 Q Did you review this set of	
3 A No. It did not.	documents in preparation for the deposition today?	
4 Q Okay. Did the bank save any	4 A Yes.	
5 documents relating to the underlying client who was	5 Q Do you have an understanding of	
6 involved in the subscription and redemption in this	6 what this set of documents is?	
7 case to that system?	7 A Roughly, yes.	
8 A Meaning account opening forms	8 Q What is that, sir?	
9 or	9 A Well, these are the this is a	
10 Q Informing relating any	10 copy of the binder that has been handed over by	
11 information relating to that client.	11 Benny Reiter a couple years ago. This is an	
12 A Yes. Yes.	12 abstract of a copy of that binder.	
13 Q Does the bank still have that	13 Q Mr. Reiter turned this over to	
14 information in its control?	14 to whom did he turn it over, do you know?	
15 A Yes.	15 A I don't have that exact	
16 Q Is that information that is stored	16 information available. Somebody in the legal	
17 in physical form or electronic form?	17 department.	
18 A It is it is electronically	18 Q And I believe you said that	
19 available, so it is an electronic tool in which	19 Mr. Reiter turned this over a couple of years ago,	
20 documents are being stored, physical documents or	20 is that right?	
21 yes, client-related documents are being stored.	21 A Yes. Yes. In 2010.	
22 Q Is there any information relating	22 Q In 2010. Is this is this the	
23 to the Fairfield funds stored in the underlying	23 set of documents that you had referred to earlier	
24 clients filed in the Documentum system?	24 that you said was collected after August of 2010	
25 A No.	25 when BIL received the notice and summons in the	
	E DEDOC	

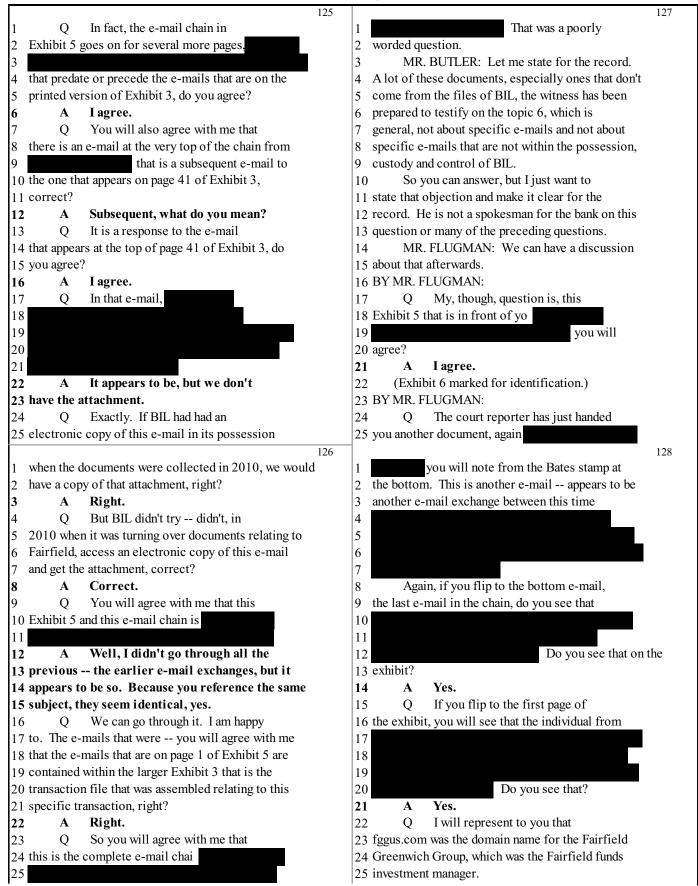


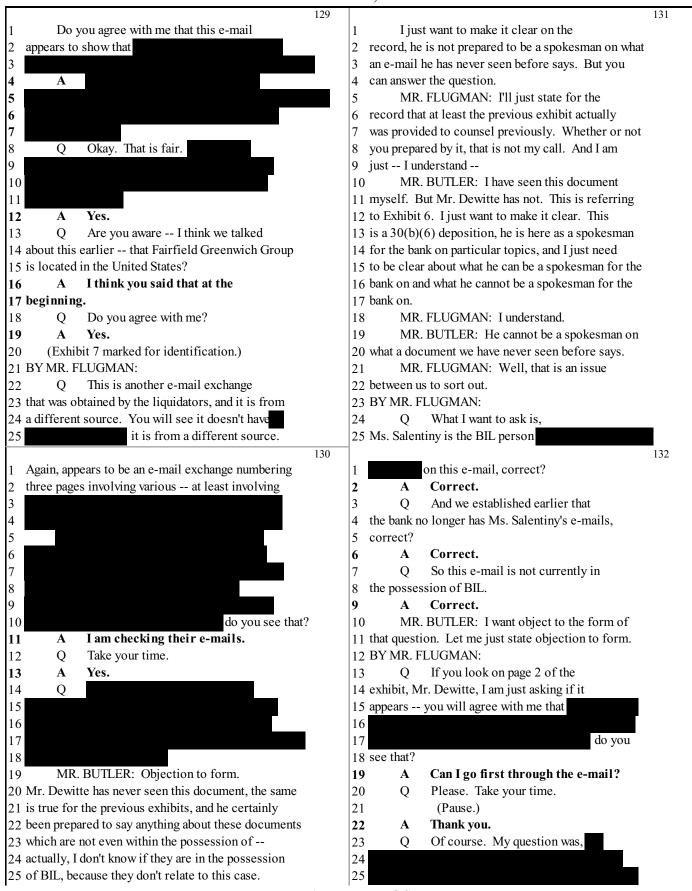


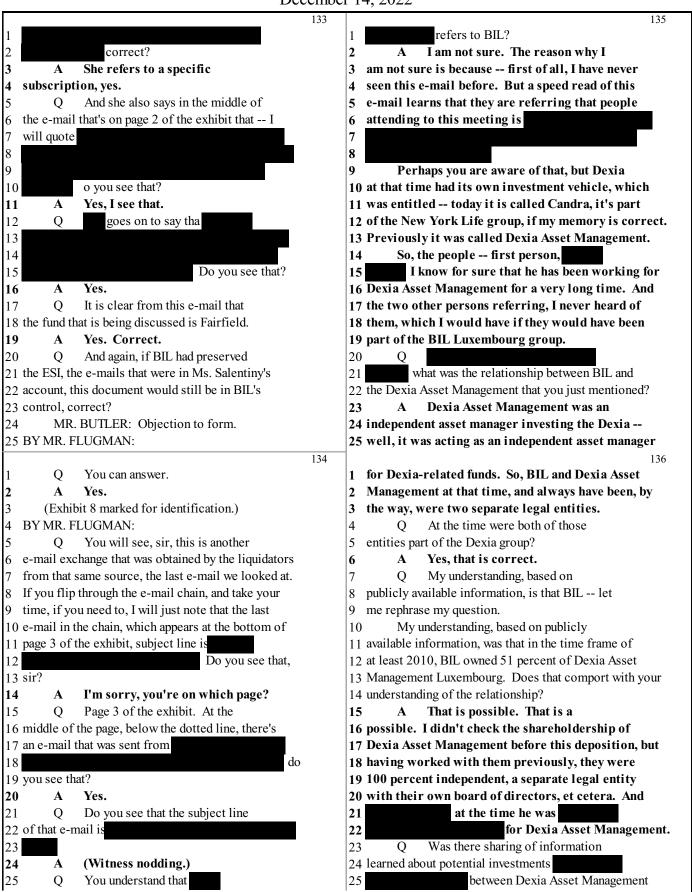


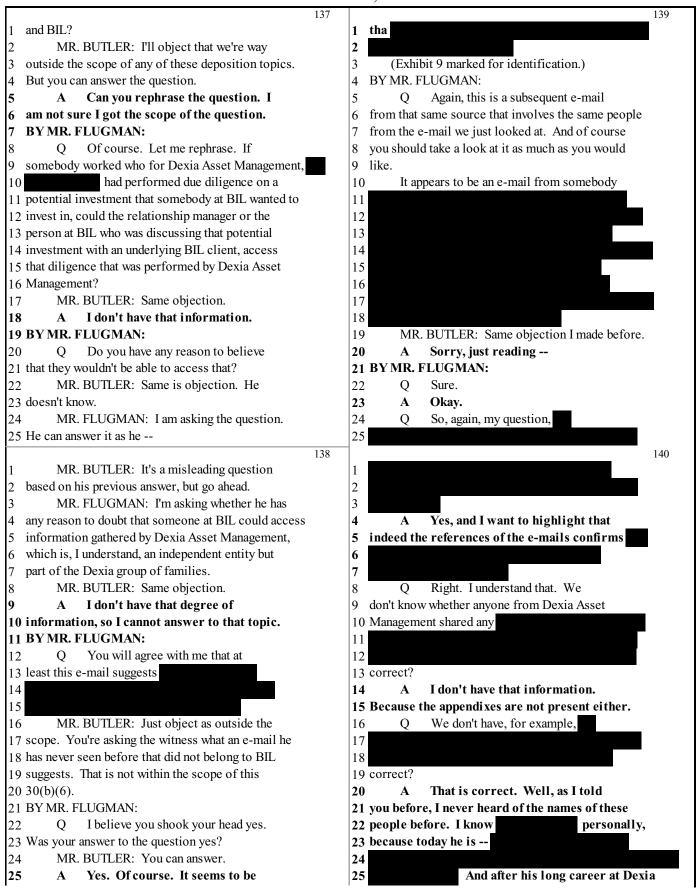


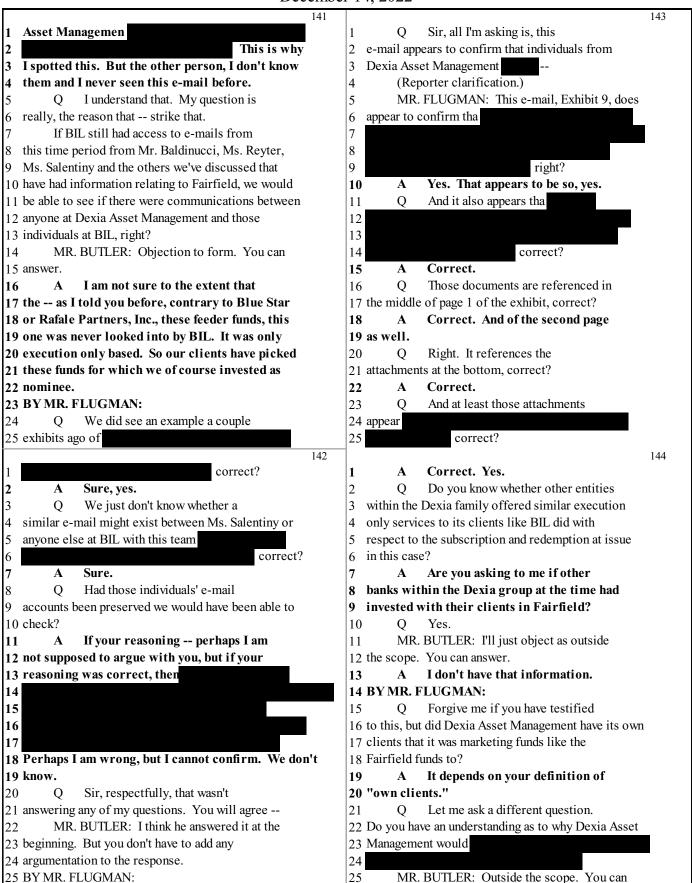


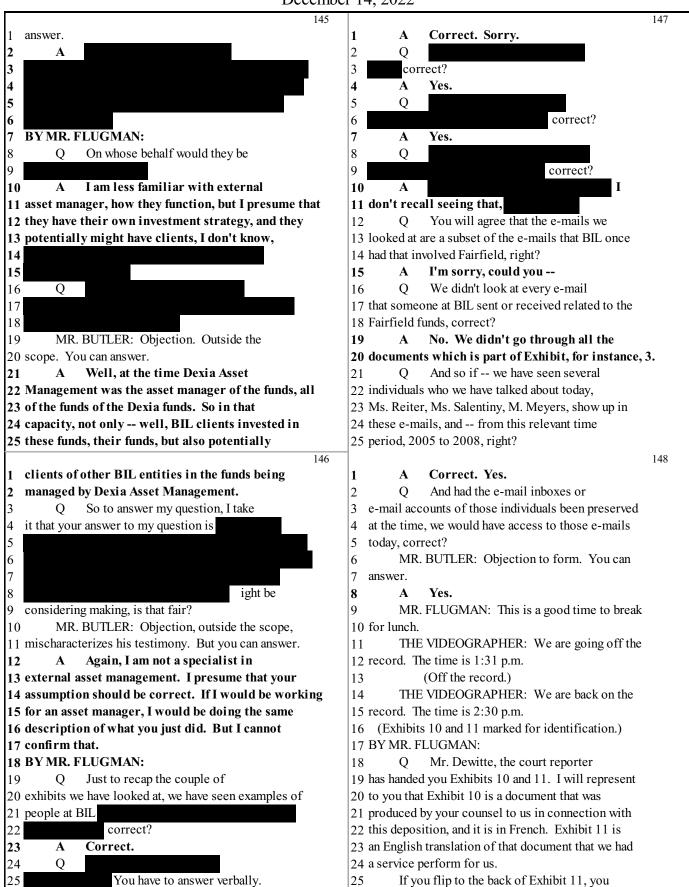


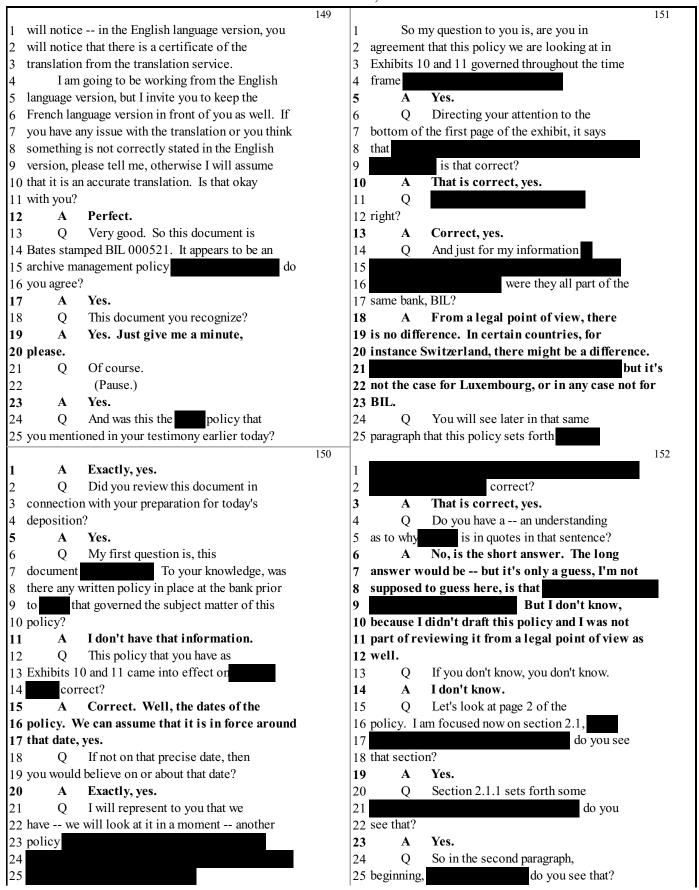


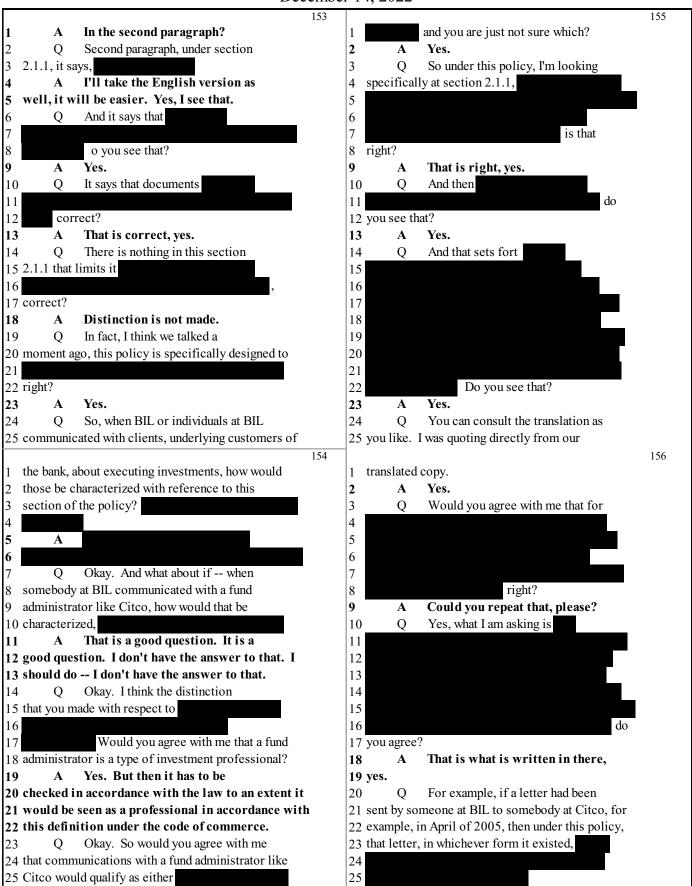


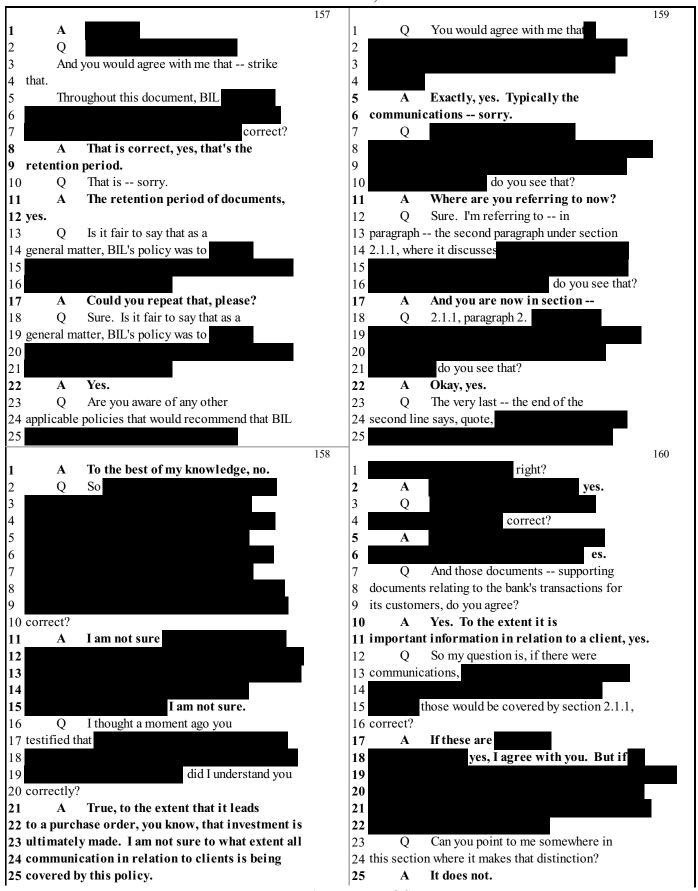


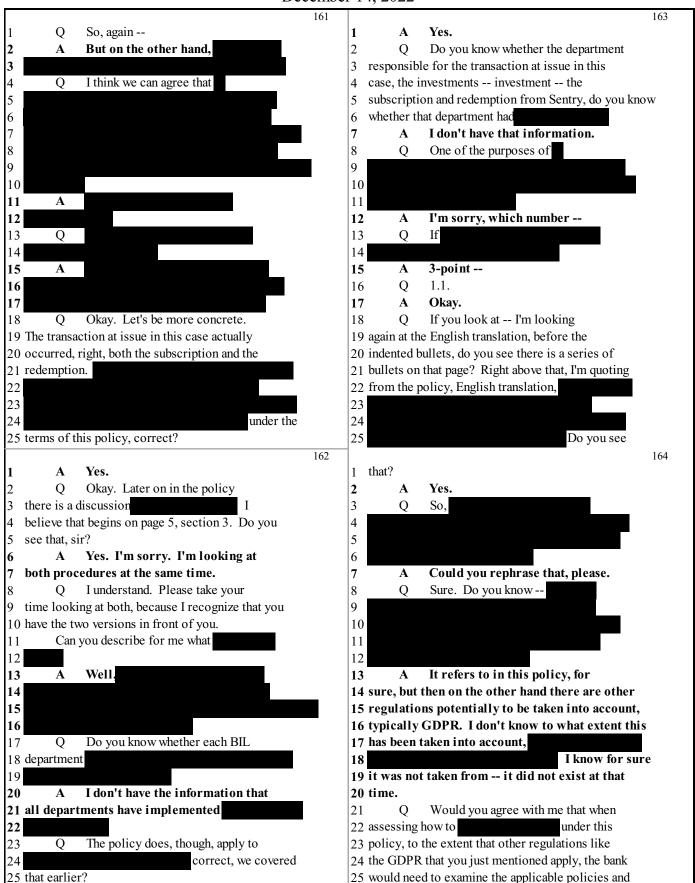


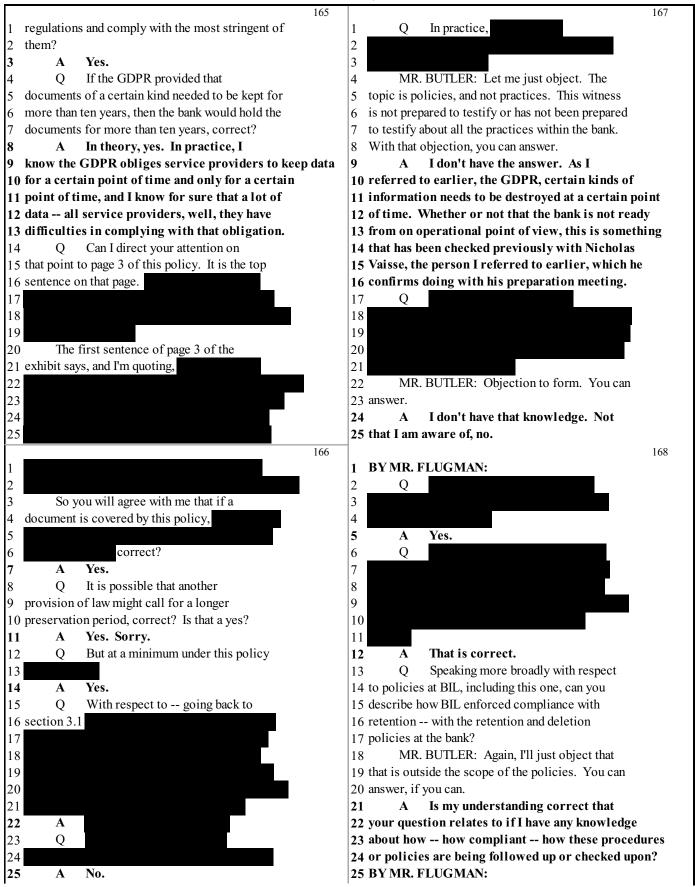






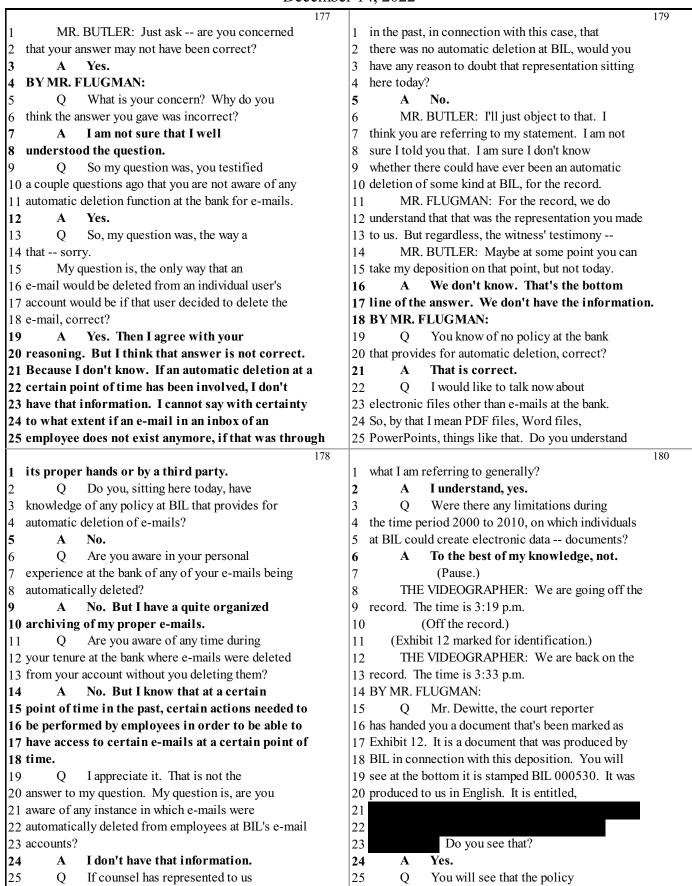


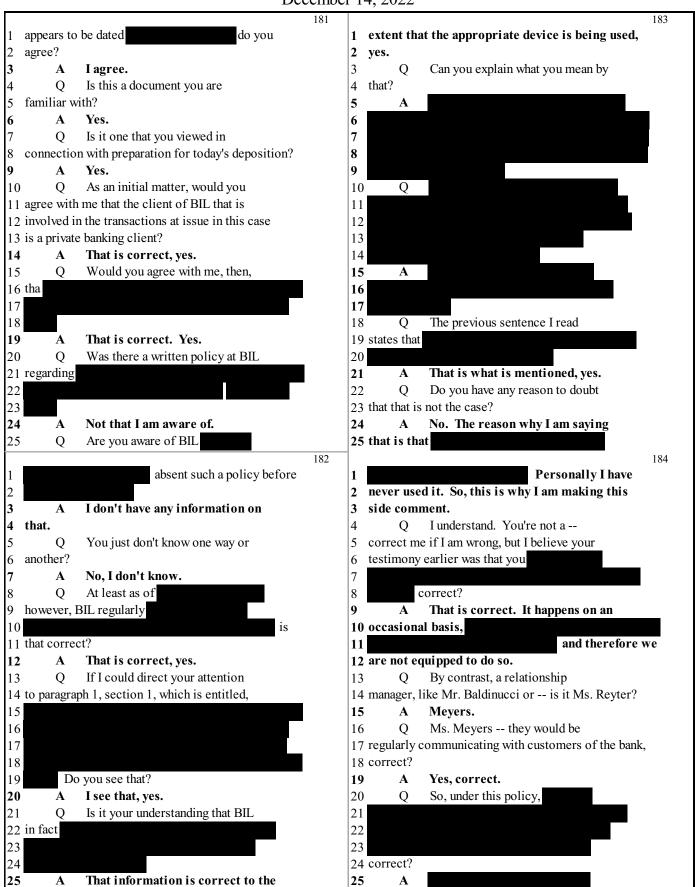


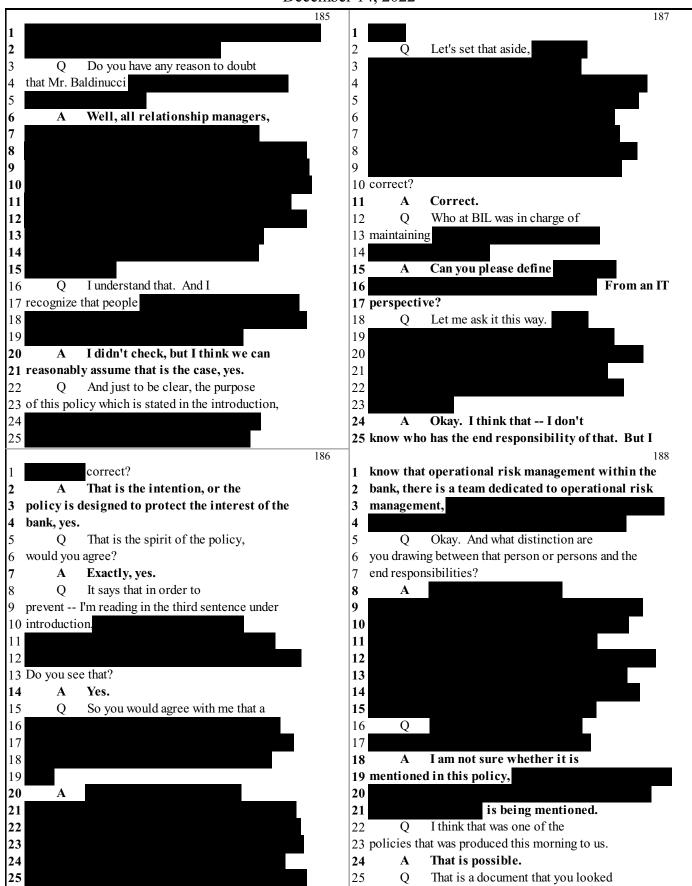


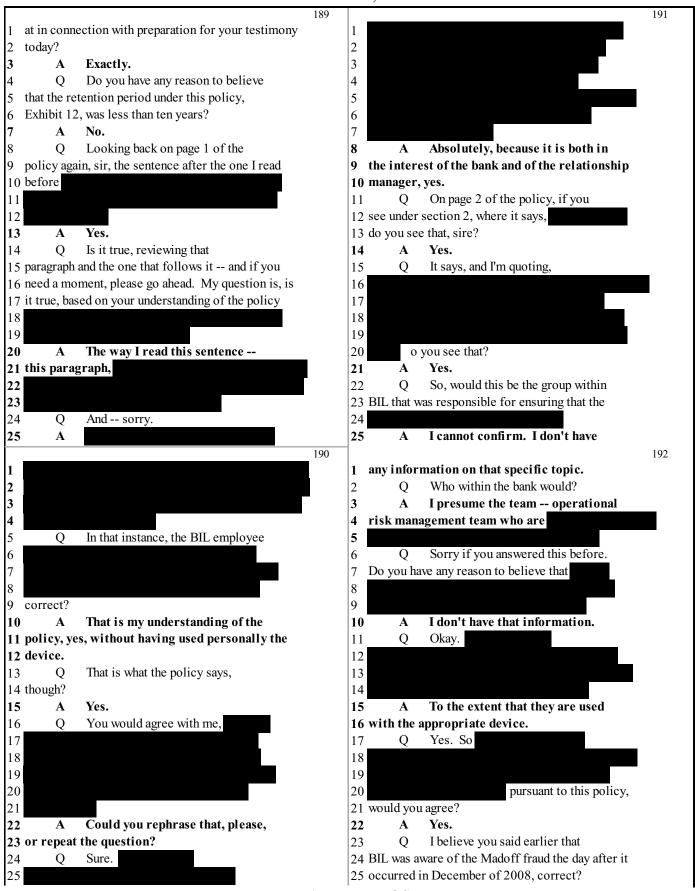
December	111, 2022
169	171
1 Q Yes, so let's make the question	1 your questions. With that objection, you can
2 more specific. Let's talk about this policy. After	2 answer.
3 this policy was issued what did BIL do to	3 A I can only rephrase what
4 ensure that employees at the bank were following the	4 Mr. Butler just told you, I can share my personal
5 policy?	5 experience in relation to use of e-mails.
6 A I don't have that information.	6 BY MR. FLUGMAN:
7 Q Do you know whether employees at	7 Q I will try to be more specific
8 BIL received training on how to use this policy?	8 with my question. I am referring to the use of
9 A I don't have that information.	9 e-mails as it relates to topic 5, which relates to
10 Q Do you know whether new employees	10 document retention, preservation and destruction
11 when they joined the bank were made aware of this	11 and/or deletion policies in the normal course of
12 policy?	12 business. My questions about e-mail are intended to
13 A I know that employees within BIL	13 be relative to that topic.
14 have to follow several trainings in relation to	14 I think you testified earlier today that
15 different topics. I don't have the information, but	15 you had seen these topics and you are prepared to
16 it seems logical to me that persons treating or	16 testify about them, correct?
17 relationship managers treating with clients and	17 A Yes.
18 handling these kinds of documents in relation to	18 Q I am focusing on the 2000 to 2008
19 archiving, are being trained or at least have to	19 time frame. Actually, I will extend it to 2010 to
20 familiarize themselves with these policies.	20 be comprehensive.
21 Q You don't know for sure one way or	MR. BUTLER: Only a ten-year time period?
22 the other?	22
23 A Correct.	23 BY MR. FLUGMAN:
24 Q Is there somebody that you could	24 Q Only. Were there any size
25 talk to within BIL who would know that?	25 limitations on individual employees' e-mail accounts
170	172
1 A Yes. The owner of the policy.	1 at BIL during that time frame?
2 Q Who was the owner of this policy	2 MR. BUTLER: Objection to form. That is
we have been discussing in Exhibits 10 and 11.	3 not a policy as such. But if you know the answer,
4 A Gilles Wagener, a person we	4 you can respond. This witness is not prepared to
5 referred to earlier.	5 testify about all the details of how the e-mail
6 Q You did speak with Mr. Wagener in	6 system worked more than ten years ago. If he knows
7 preparation for the deposition today, correct?	
* * * * * * * * * * * * * * * * * * *	7 the answer, he can respond.
	 7 the answer, he can respond. 8 A Could you repeat the question,
8 A That is correct. Yes.	
8 A That is correct. Yes. 9 Q Did BIL maintain any records or	8 A Could you repeat the question,
8 A That is correct. Yes. 9 Q Did BIL maintain any records or 10 logs identifying when documents, either electronic	8 A Could you repeat the question, 9 please?
8 A That is correct. Yes. 9 Q Did BIL maintain any records or 10 logs identifying when documents, either electronic 11 or hard copy covered by this policy, were destroyed	8 A Could you repeat the question, 9 please? 10 BY MR. FLUGMAN:
8 A That is correct. Yes. 9 Q Did BIL maintain any records or 10 logs identifying when documents, either electronic 11 or hard copy covered by this policy, were destroyed 12 by the bank?	8 A Could you repeat the question, 9 please? 10 BY MR. FLUGMAN: 11 Q Do you know whether there was any
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A That is correct. Yes. Q Did BIL maintain any records or lo logs identifying when documents, either electronic l or hard copy covered by this policy, were destroyed by the bank? A I don't have that information. Have you ever seen such a log or	8 A Could you repeat the question, 9 please? 10 BY MR. FLUGMAN: 11 Q Do you know whether there was any 12 limitation on the size of an e-mail account for an 13 employee at the bank?
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A That is correct. Yes. Q Did BIL maintain any records or 10 logs identifying when documents, either electronic 11 or hard copy covered by this policy, were destroyed 12 by the bank? 13 A I don't have that information. 14 Q Have you ever seen such a log or 15 record? 16 A No. 17 Q I want to talk a little bit about 18 the e-mail system at BIL. Is that something you are 19 familiar with based on your preparation for today's 20 deposition? 21 MR. BUTLER: Let me just object. It is	8 A Could you repeat the question, 9 please? 10 BY MR. FLUGMAN: 11 Q Do you know whether there was any 12 limitation on the size of an e-mail account for an 13 employee at the bank? 14 A If my memory is correct, at a 15 certain point of time, yes. Because that was the 16 reason why we have been asked and I'm just 17 talking my personal experience. We have been asked 18 to archive with one specific period in time as much 19 e-mails as possible in order to be obliged to double 20 the increase of the inbox at each time. 21 Q Do you recall when that was?
A That is correct. Yes. Q Did BIL maintain any records or 10 logs identifying when documents, either electronic 11 or hard copy covered by this policy, were destroyed 12 by the bank? 13 A I don't have that information. 14 Q Have you ever seen such a log or 15 record? 16 A No. 17 Q I want to talk a little bit about 18 the e-mail system at BIL. Is that something you are 19 familiar with based on your preparation for today's 20 deposition? 21 MR. BUTLER: Let me just object. It is 22 not the general topic of the e-mail system at BIL	8 A Could you repeat the question, 9 please? 10 BY MR. FLUGMAN: 11 Q Do you know whether there was any 12 limitation on the size of an e-mail account for an 13 employee at the bank? 14 A If my memory is correct, at a 15 certain point of time, yes. Because that was the 16 reason why we have been asked and I'm just 17 talking my personal experience. We have been asked 18 to archive with one specific period in time as much 19 e-mails as possible in order to be obliged to double 20 the increase of the inbox at each time. 21 Q Do you recall when that was? 22 A It was probably the time period
A That is correct. Yes. Q Did BIL maintain any records or 10 logs identifying when documents, either electronic 11 or hard copy covered by this policy, were destroyed 12 by the bank? 13 A I don't have that information. 14 Q Have you ever seen such a log or 15 record? 16 A No. 17 Q I want to talk a little bit about 18 the e-mail system at BIL. Is that something you are 19 familiar with based on your preparation for today's 20 deposition?	8 A Could you repeat the question, 9 please? 10 BY MR. FLUGMAN: 11 Q Do you know whether there was any 12 limitation on the size of an e-mail account for an 13 employee at the bank? 14 A If my memory is correct, at a 15 certain point of time, yes. Because that was the 16 reason why we have been asked and I'm just 17 talking my personal experience. We have been asked 18 to archive with one specific period in time as much 19 e-mails as possible in order to be obliged to double 20 the increase of the inbox at each time. 21 Q Do you recall when that was?

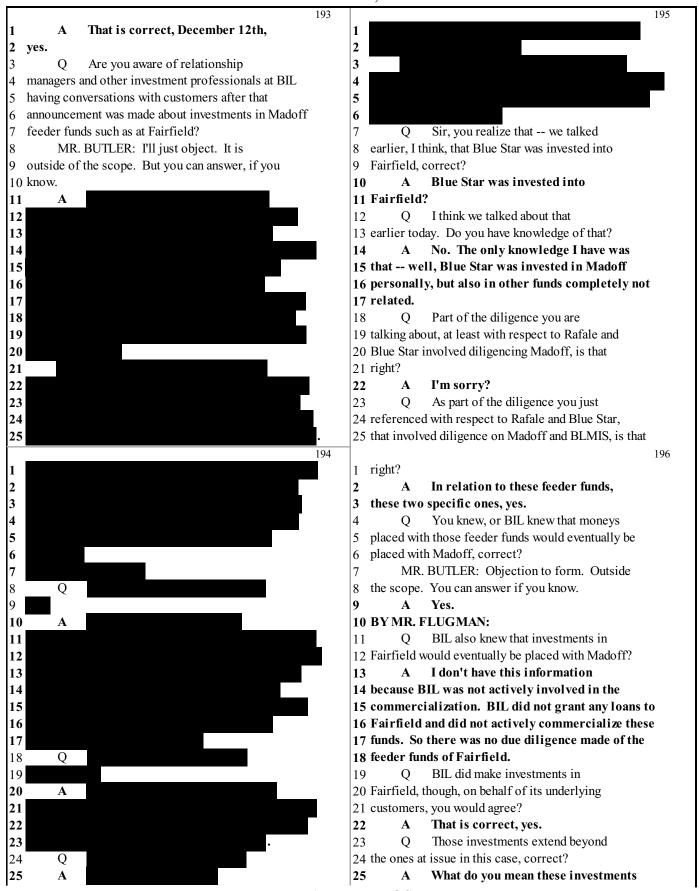
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1 specific recollection of when that request was made?	1 employee's e-mail account would be if that
2 A I am sorry, I don't have a more	2 individual e-mail (sic) chose to delete that e-mail
3 specific recollection in time. It is already more	3 him or herself, correct?
4 than ten years ago.	4 MR. BUTLER: Objection to form. You can
5 Q Do you think it was when you were	5 answer. Also outside the scope. But you can
6 in your current position as head of wealth	6 answer, if you know.
7 management legal?	7 BY MR. FLUGMAN:
8 A I prefer not guessing, so I prefer	8 Q Let me rephrase the question, just
9 saying that I don't have the information.	9 to be clear. The only way that an e-mail would not
10 Q But you think it was more than ten	10 remain in a BIL employee's e-mail account would be
11 years ago?	11 if that individual employee chose to delete it, is
12 A Yes.	12 that your understanding?
13 Q Could individual employees at BIL	13 A Without being expert, that is my
14 delete e-mails if they chose to?	14 understanding.
15 A Yes.	15 Q Were there individuals within BIL
16 Q If an individual employee at BIL	16 who had the ability to permanently delete electronic
17 chose to delete an e-mail from his or her user	17 information or electronically stored information
18 account, was there a back-up copy or redundant copy	18 from the servers at BIL?
19 saved somewhere on BIL's servers?	19 A I'm sorry, could you repeat that?
20 A I don't have any direct	20 Q Sure. Were there individuals
21 confirmation for that. I can only make a deduction	21 within BIL who had access to the servers where
22 with the information that Kyndryl has provided to us	22 electronically stored information for employees at
23 a couple of weeks ago, but that would be a	23 the bank was stored?
24 deduction.	24 A People who had access to the
25 Q So you don't know one way or the	25 servers?
174	176
1 other?	1 Q Server. We talked this morning
2 A Well, Kyndryl confirmed to us that	2 about Kyndryl at some point hosting e-mail servers
3 no in relation to the active mailboxes, no	3 for individual BIL employee. My question is, were
4 back-up or archives are possible. But that would be	4 there people during this time period, 2000 to 2010,
5 just assumptions. I prefer that is not being taken	5 within BIL who had access rights to the servers
6 into account as an answer.	6 where information was stored at a higher level than
7 Q Are you aware of any mass purges	7 individual e-mail accounts?
8 of e-mails	8 MR. BUTLER: Object as being outside the
9 A Sorry, what?	9 scope. If you know, you can answer.
10 Q A large scale deletion of e-mails	10 A I don't have that information, but
11 from individual users' accounts at the bank?	11 I presume so.
12 A To the best of my knowledge, no.	May I ask if you could re-read not this
Q If a user did not choose to delete	13 question, but the previous one asked in relation to
14 an e-mail him or herself, was there any automatic	14 the deletion of e-mails? If my understanding was
15 deletion of e-mails for an individual account?	15 correct that the only way that an e-mail of an
16 A Besides what Kyndryl has informed	16 individual could be deleted or disappeared was by
17 us, I don't have any other information available.	17 deleting it, was that your question previous
18 Q You don't know of any policy of	18 question?
19 automatic deletion of e-mails, correct?	19 BY MR. FLUGMAN:
20 A That is correct.	Q Are you confused about the answer
21 Q For that relevant time period,	21 you gave or
22 2000 to 2010, correct?	A No. The question as such. I'm
23 A Yes, correct.	23 sorry for that.
Q So, just to be clear, the only way	Q We can go back to that later. My
25 that an e-mail would not have remained in an	25 question

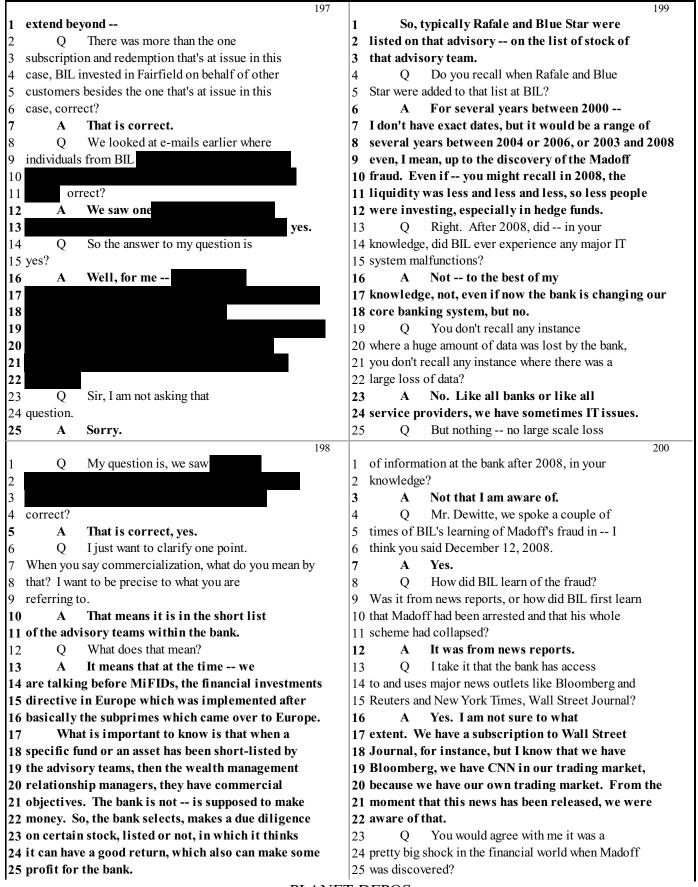








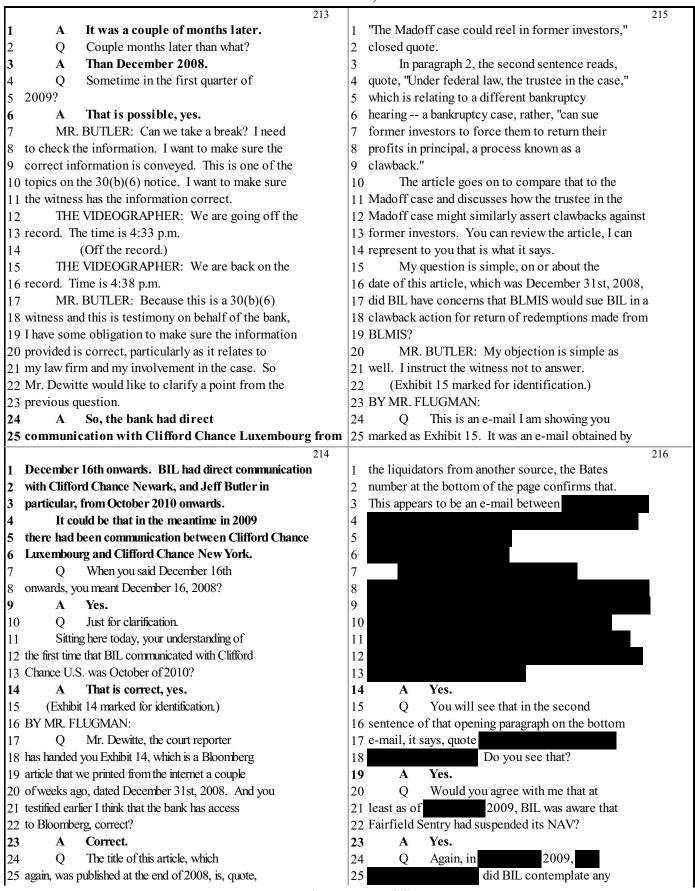




201 203 It was a huge shock, yes. that it is not covered by the 30(b)(6) notice. I A 2 Catastrophic even? think it is squarely covered by topic 2. Again, I Q am asking for facts relative to when the bank was or Exactly. The first numbers I have A in mind are 50 billion U.S. dollars, even really was not on notice of the claims in this case. before -- I mentioned before the second press MR. BUTLER: That is it. You are asking release of December 11 mentioned, if my memory is about the claims in this case by proxy. That goes correct, \$17 billion of assets under management at to whether the legal department anticipated the the beginning of 2008. claims in this case. And I think that is work At the time that BIL learned of product, mental impressions of lawyers representing O 10 banks concerning litigation, concerning this 10 the Madoff collapse, or shortly thereafter, did BIL 11 contemplate that the feeder funds we have been 11 specific litigation risk. If you limit it to --12 talking about that invested into Madoff would also 12 that is my problem with the question. 13 collapse? 13 MR. FLUGMAN: That is exactly the point of MR. BUTLER: Objection to form. I don't 14 the topic. The point of --MR. BUTLER: The topic is -- which topic 15 think I can let that question go in that form. It 15 16 goes to the mental impressions of people in the 16 are you talking --17 bank, and of course Mr. Dewitte as a lawyer. In 17 MR. FLUGMAN: 2. 18 terms of what was contemplated by BIL in terms of 18 MR. BUTLER: Topic 2 is notice that BLMIS 19 legal exposure, I think that gets into privileged 19 has been placed into liquidation. He's answered 20 question. So I instruct the witness not to answer. 20 that question. 21 MR. FLUGMAN: First of all, I'm not yet 21 MR. FLUGMAN: And what actions if any you 22 took to preserve information regarding your or your 22 asking about the substance or about legal exposure. 23 I am just asking whether the witness contemplated 23 client's exposure --24 that the feeder funds would also collapse. I think 24 MR. BUTLER: You haven't asked about what 25 that goes directly to when the bank had potential 25 steps -- well, he has testified about steps that 202 204 1 notice of the claims that are at issue here, and I were taken to preserve information at that time. think that is squarely within bounds in terms of the You can ask him questions about that. But that is topics of the deposition and is not protected by different from asking what the bank, quote, end 4 privilege. quote, contemplated at that time. He has no way of 5 knowing what other people contemplated. MR. BUTLER: Whether the bank contemplated 6 the collapse of the feeder funds -- I am not sure I Anyway, the bank's contemplation is not 7 remember your question clearly, but I think if it is part of this. It is notice and steps to preserve. 8 limited to whether the bank -- people within the He can testify in concrete terms about what steps 9 bank contemplated the collapse of Fairfield, I think were taken to preserve documents at that time. I 10 that would be okay. If you want to ask it that way. 10 think that is very different from what you are 11 BY MR. FLUGMAN: 11 asking now. 12 Let me ask the question again. In 12 MR. FLUGMAN: Let's go off the record. 13 or around December of 2008, after Madoff's fraud was 13 THE VIDEOGRAPHER: We are going off the 14 exposed, did BIL contemplate that the Madoff feeder 14 record. The time is 4:07 p.m. 15 funds like Fairfield would also collapse? 15 (Off the record.) MR. BUTLER: I just have a problem with THE VIDEOGRAPHER: We are back on the 17 the question still. This is outside the scope of 17 record. The time is 4:20 p.m. 18 the 30(b)(6). So I think you can only ask 18 BY MR. FLUGMAN: 19 Mr. Dewitte that question in his personal capacity. Mr. Dewitte, I want to go back to 20 a question you had answered earlier today and just 20 Again, it is going into the mental 21 impressions of lawyers at that time. I don't think 21 make sure I understand it. I believe you testified 22 he can answer that question without getting involved 22 earlier that BIL learned about the Fairfield 23 in privilege and/or work product. So I instruct the 23 litigation in August of 2010 when it received the 24 witness not to answer. 24 notice and summons, is that correct? 25 MR. FLUGMAN: For the record, I disagree 25 That is correct, August 30th, yes.

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1 Q And that BIL did not contemplate	of these funds of funds to be doing due diligence.	
2 litigation regarding Fairfield before then?	2 That is why they get paid." Do you see that?	
A That is correct, yes.	3 A Yes, sir.	
4 MR. BUTLER: Let's just go slowly when we	Q On the next page of the document,	
5 are talking about BIL contemplated. He answered the	5 page 2, do you see halfway down the page there's a	
6 question. I have the same issue with these	6 heading that says, "Due Diligence"?	
7 contemplation questions. They necessarily implicate	7 A Yes, sir.	
8 the thoughts of the legal department of BIL.	8 Q It says that the article says	
9 In terms of notice, which comes from	9 that "They," referring to funds of funds, "are	
10 outside, that is fair game; in terms of actions	10 supposed to conduct ongoing due diligence to avoid	
11 taken by the bank, that is fair game. But I am	11 frauds or other dangers such as managers straying	
12 going to object to questions about contemplations of	12 from their core investment strategy."	
13 lawyers within the bank.	13 It goes on to say, 'Fairfield Greenwich is	
14 (Exhibit 13 marked for identification.)	14 the biggest loser to emerge so far from the Madoff	
15 BY MR. FLUGMAN:	15 scandal." And you will recall from earlier,	
16 Q Before we get to this, I just want	16 Fairfield Greenwich Group was the Fairfield funds	
17 to clarify, that last question I asked that	17 investment manager, do you remember that?	
18 Mr. Butler had objected to, you had answered yes,	MR. BUTLER: You told him that.	
19 correct that BIL hadn't contemplated litigation	19 BY MR. FLUGMAN:	
20 before August of 2010?	Q Yes. You agree with me that we	
21 MR. BUTLER: I'm not going to let you	21 discussed that earlier?	
22 answer the question again. The record will speak	22 A Yes.	
23 for itself. If he didn't answer the question, I	Q Do you generally agree that it is	
24 object and instruct the witness not to answer. But	24 incumbent upon investment managers to diligence	
25 I think he did. I think you have your record.	25 potential investments?	
206		208
1 A May I add something?	1 MR. BUTLER: Objection. I'll instruct the	
2 MR. BUTLER: No. Just answer his	2 witness not to answer. You're asking for his	
3 questions.	3 general agreement about things in a press release?	
4 BY MR. FLUGMAN:	4 MR. FLUGMAN: What's the basis of your	
5 Q Let's look at the exhibit in front	5 instruction not to answer?	
6 of you, sir. I will represent to you that this is a	6 MR. BUTLER: He is a lawyer, so his ideas	
7 news story from the Bloomberg news wire that we	7 about things relevant to this case are clearly	
8 pulled off recently from a publicly available	8 covered by work product. Things he knows are	
9 source. It is a document that a news article	9 generally informed by privileged communications.	
10 that was published on December 15, 2008, entitled,	10 You can't just ask him free-floating questions about	
11 "Fairfield Sent Madoff \$7.3 Billion as Funds Took	11 what he believes in this deposition. If it is tied	
12 Fees." Do you see that, sir?	12 directly to a topic and he is prepared to testify as	
13 A Yes.	13 a representative of the bank, that is a different	
14 Q Looking at the opening the	14 things. But this general question about what he	
15 second paragraph, where it says the 7.3 billion	15 believes doesn't fall into that category.	
16 dollar Fairfield Sentry funds do you see that?	MR. FLUGMAN: There is a distinction	
17 A Yes.	17 between whether it relates to a topic and whether	
I 1 0 O states that it imported a - 1 - 1	18 it's privileged. Are you asserting that the	
18 Q states that it invested solely		
19 with Madoff, taking a cut of one percent of assets	19 question I asked is calling for privileged	
19 with Madoff, taking a cut of one percent of assets 20 and 20 percent of gains, do you see that, sir?	20 information?	
 19 with Madoff, taking a cut of one percent of assets 20 and 20 percent of gains, do you see that, sir? 21 A Yes, sir. 	20 information? 21 MR. BUTLER: Let me hear the question	
 19 with Madoff, taking a cut of one percent of assets 20 and 20 percent of gains, do you see that, sir? 21 A Yes, sir. 22 Q Later, in the next paragraph, at 	20 information? 21 MR. BUTLER: Let me hear the question 22 again. Yes, I was, but I could be wrong about that.	
 19 with Madoff, taking a cut of one percent of assets 20 and 20 percent of gains, do you see that, sir? 21 A Yes, sir. 22 Q Later, in the next paragraph, at 23 the end of that paragraph is a quote from somebody 	20 information? 21 MR. BUTLER: Let me hear the question 22 again. Yes, I was, but I could be wrong about that. 23 I've made mistakes before. So can I hear it again.	
 19 with Madoff, taking a cut of one percent of assets 20 and 20 percent of gains, do you see that, sir? 21 A Yes, sir. 22 Q Later, in the next paragraph, at 	20 information? 21 MR. BUTLER: Let me hear the question 22 again. Yes, I was, but I could be wrong about that.	

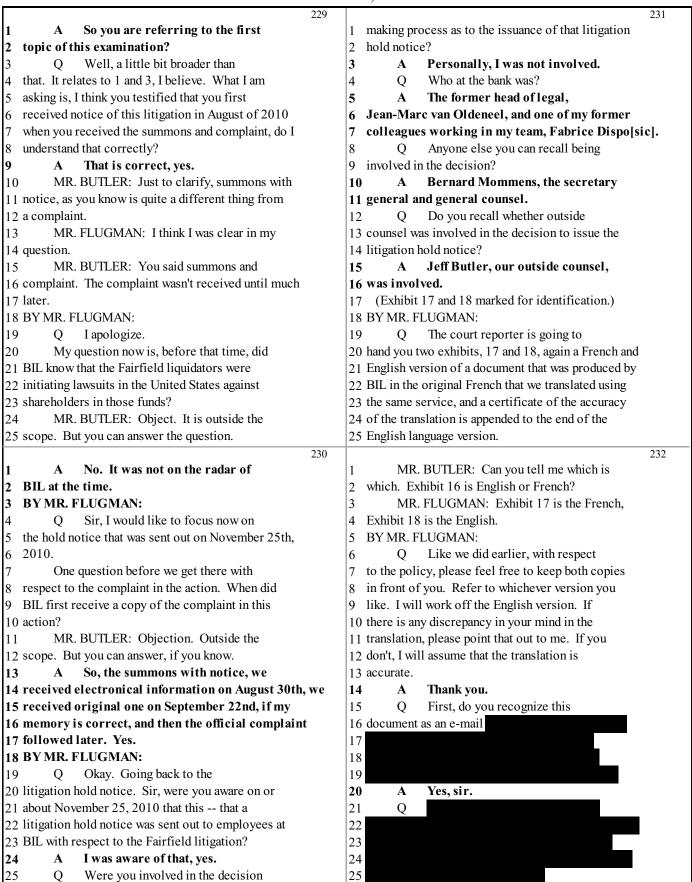
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1 to answer. You are really asking for Mr. Dewitte's	1 that time relating to Madoff exposure?
2 opinion as a lawyer for BIL on that topic. It is a	2 A Later on, yes.
3 request for legal advice, not just a request about	3 Q When?
4 legal advice. You're asking for his legal opinion,	4 A It was afterwards. It was I
5 and that is off limits.	5 don't have the specific time frame in mind. It was
6 BY MR. FLUGMAN:	6 later on.
7 Q At the time of this article,	7 Q Was it in early 2009?
8 December 15, 2008, did BIL contemplate potentially	8 A It was even later on, it was in
9 bringing claims against Fairfield Greenwich Group?	9 September 2010 that we were in close contact.
MR. BUTLER: Hold on. Don't answer that.	10 Q Sorry, is your testimony that the
11 Let me hear it again, please.	11 first time BIL contacted or somebody acting on
(Court reporter read back.)	12 behalf of BIL contacted U.S. counsel was
MR. BUTLER: I stand by my instruction not	13 September 2010?
14 to answer. The contemplation of future claims is	14 A Yes.
15 clearly within the work product protection and	15 Q With respect to to be clear, I
16 Mr. Dewitte would only know about the contemplation	16 am not talking solely about this case, I'm talking
17 of future claims from his privileged discussions	17 about BIL's potential exposure to Madoff generally.
18 within the bank.	18 Is it your testimony that the first time BIL or
19 BY MR. FLUGMAN:	19 somebody on BIL's behalf contacted U.S. counsel to
20 Q Next page of the article, under	20 advise on the question of BIL's potential exposure
21 the heading "Bank Fees." The final paragraph of	21 to Madoff was September 2010?
22 that section quotes a lawyer named Scott Berman at a	22 A In December 16th already BIL
23 firm called Friedman Kaplan in New York, and reports	23 contacted Clifford Chance Luxembourg. It is only
24 that Mr. Berman had gotten numerous calls from	24 afterwards that it was because of Clifford Chance
25 investors who had money with feeder funds such as	25 Luxembourg that Clifford Chance U.S. was contacted.
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1 Fairfield Greenwich and Treemont, and that he plans	But it was not straight afterwards. It was a while
2 to investigate whether these funds failed to do due	2 afterwards.
3 diligence or if they invested in ways that were	Q So I understand, your testimony is
4 contrary to what they told investors. That is a	4 that you are not aware of Clifford Chance United
5 quote from the article.	5 States being consulted by BIL before September of
6 At the time of this article did BIL	6 2010 in connection with Madoff generally?
7 contact Mr. Berman regarding such potential claims.	7 A According to my review, it was
8 MR. BUTLER: Object that that is outside	8 which is written on my notes here, September 2010,
9 the scope of the topic. But if you know, you can	9 yes.
10 answer the question. 11 A So around December 15 did BIL	10 Q What whom did you consult in 11 order to learn that fact for today's deposition?
12 contact 13 Q A lawyer named Scott Berman.	12 A I reviewed internal files of the 13 legal department.
14 A Not that I am aware of, no.	14 Q Do you know whether Clifford
15 Q In or around December 15, 2008,	15 Chance Luxembourg reached out to Clifford Chance in
16 did BIL contact any U.S. lawyer with respect to	16 the United States with respect to potential exposure
17 Madoff exposure?	17 by BIL to the Madoff scandal one way or the other?
18 A Not directly, no.	18 A Yes, there has been some
19 Q Did BIL contact any U.S. lawyer	19 communication on that, yes.
20 indirectly with respect to potential Madoff	20 Q When was the first communication?
21 exposure?	21 A I don't have the exact date in
22 A BIL contacted Luxembourg counsel	22 mind.
23 after it discovered the Madoff fraud.	23 Q Was it in December of 2008?
24 Q Do you understand that Luxembourg	24 A It was later on.
25 counsel contacted U.S. counsel on behalf of BIL at	25 Q Was it in the first half of 2009?
	120 V 11 40 It III the Hall Of 2007;

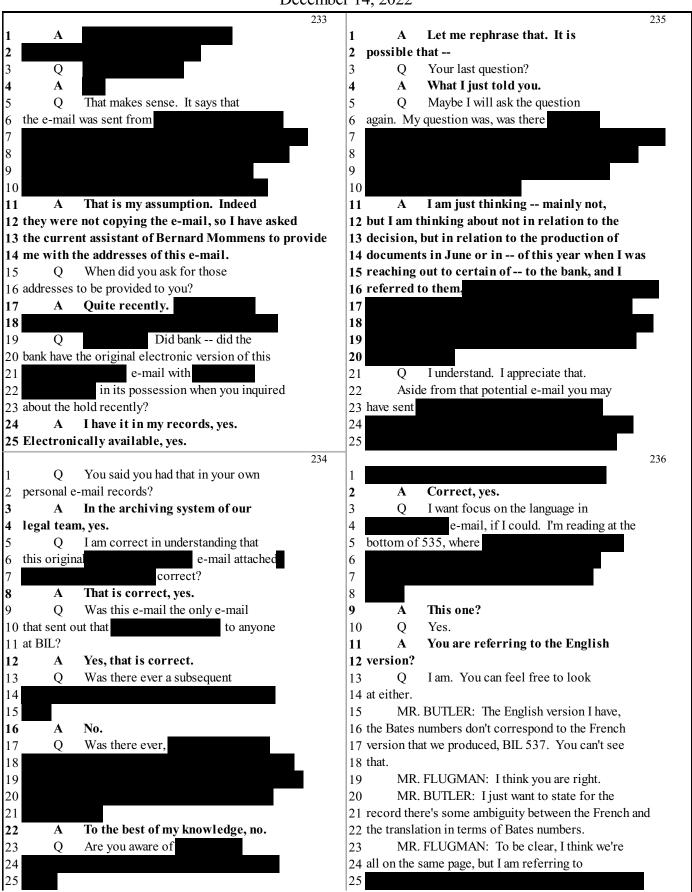


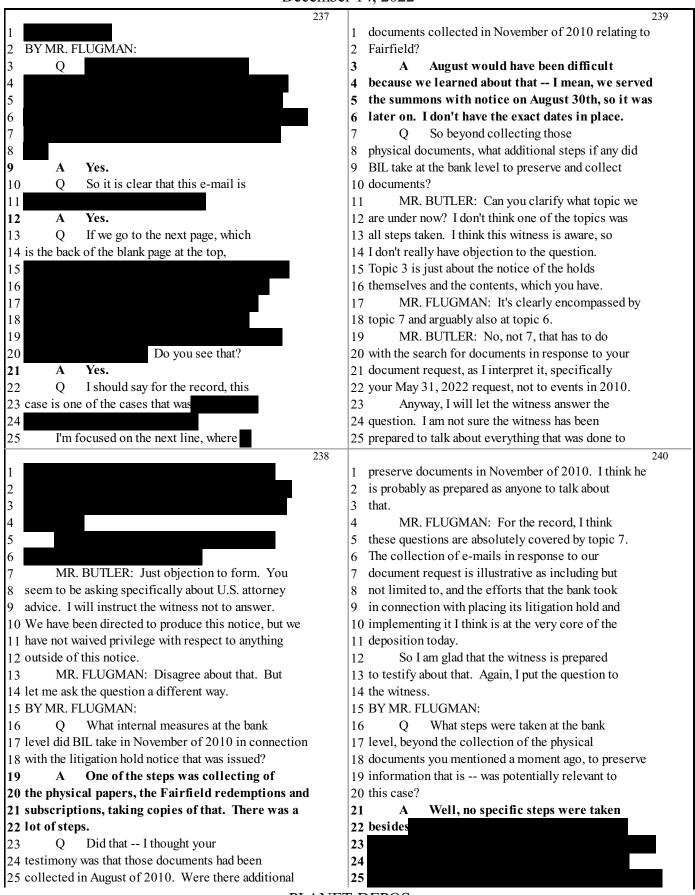
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1 litigation involving Fairfield Greenwich Group or	1 Jeff, and the interview we made with Michelle Albert
2 the Fairfield funds?	2 we referred to earlier today; and for your
3 MR. BUTLER: Objection. I can make this	3 information I was also earlier referring to a task
4 objection all day if I need to, but I instruct the	4 force that was set up. One of the objectives of
5 witness not to answer on contemplated specific	5 that task force was that an inspection team was
6 litigation exposure in this case.	6 mandated to collect physical documents and to store
7 (Exhibit 16 marked for identification.)	7 them in a safe place, locked physically by the
8 BY MR. FLUGMAN:	8 inspection team.
9 Q This is Exhibit 16, an article	9 Q And I think you testified earlier
10 printed from the New York Times recently, but that	10 that no collection of documents relating to
11 appeared in the New York Times on July 21st, 2009.	11 Fairfield took place until August of 2010, is that
12 It is entitled the headline, "Judge Approves	12 right?
13 Liquidation of Madoff Feeder Funds." Do you see	13 A That is correct. If I can
14 that, sir?	14 continue, so the collection of documents we are
15 A Yes, sir.	15 talking over here, so after the collapse of Madoff,
16 Q The opening line in the article	16 after December 2008, was in relation to the feeder
17 states, quote, "A judge in BVI has approved the	17 funds Rafale Partners, Inc. and Blue Star funds.
18 liquidation of the Fairfield Sentry funds which were	18 Q I understand. The four you
19 the largest conduits for cash flowing into the hands	19 discussed earlier?
20 of Bernard L. Madoff and his global Ponzi scheme."	20 A Exactly. That was the attention
21 Do you see that?	21 point of the bank, because we granted credit and
22 A Yes, sir.	22 loans to these feeder funds and we had to handle a
Q Was BIL aware in July of 2009 that	23 lot of client complaints.
24 Fairfield Sentry had been placed into liquidation?	24 Q I understand.
25 MR. BUTLER: Object to form. Outside the	25 MR. BUTLER: Just a second. The witness
218	220
1 scope. But you can answer if you know.	1 is answering your question. Please don't interrupt
2 A I don't have that information	2 him. You are asking him to retestify about things
3 available, if at that specific moment, July 2009,	3 he testified previously. Now he is answering your
4 BIL was aware about that fact.	4 question.
5 BY MR. FLUGMAN:	5 MR. FLUGMAN: My question was
6 Q You will agree with me that fact	6 MR. BUTLER: Hold on. Let him finish his
7 of the liquidation of Fairfield Sentry was publicly	7 answer.
8 reported at that time?	8 MR. FLUGMAN: My question was just to
9 A Yes.	9 confirm that no collection of documents related to
10 Q And that certainly BIL had access	10 Fairfield took place until August of 2010. That was
11 to the New York Times?	11 my question. That is a yes-or-no question.
12 A Printed online, so, yes.	MR. BUTLER: You should have clarified it
13 Q I am aware that BIL issued a	13 was a yes-or-no question when you asked it. Why
14 litigation hold notice that we will talk about in a	14 don't you ask him a yes-or-no question.
15 moment in November of 2010. I am focusing my	15 BY MR. FLUGMAN:
16 question on the period before that time.	16 Q Sir, do I understand your
So, in the period between when BIL learned	17 testimony correctly that no documents relating to
18 of the BLMIS collapse and the liquidation of	18 the Fairfield funds were collected at BIL before
19 Fairfield, from that point in time up until the	19 August of 2010?
20 issuance of the litigation hold in December of 2010,	20 A Can I say more than yes or no?
21 did BIL take any steps to segregate or preserve	21 Q Can you answer the question yes or
22 information related to its investments with BLMIS or	22 no first?
23 Fairfield?	23 A Well, no specific documents
24 A Well, after review of internal	24 were can you repeat the question, please.
	
25 files of the legal department, discussions with	25 Q Sure. I thought that this was

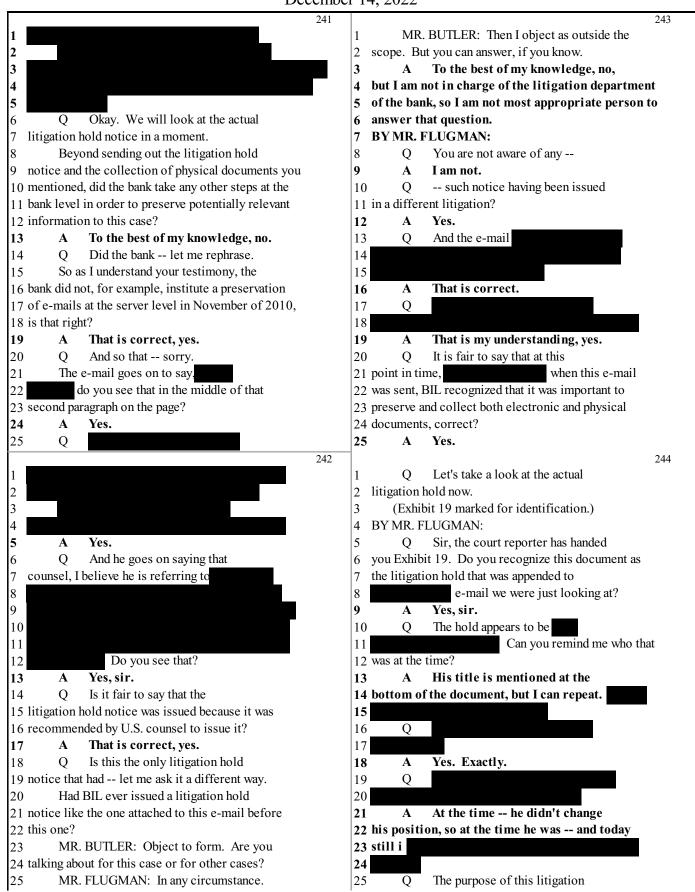
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1 clear before, perhaps it was not. I understood your	1 anybody, either in that department or elsewhere in	
2 earlier testimony	2 BIL, monitor litigation that the Madoff trustee was	
3 MR. BUTLER: We don't need any commentary.	3 filing in New York?	
4 BY MR. FLUGMAN:	4 A Not that I am aware of, no.	
5 Q I understand from your earlier	5 Q After the BLMIS collapse in	
6 testimony that the first time the bank collected	6 December of 2008, did BIL consider suspending or	
7 information relating to the Fairfield funds was	7 changing any of its document retention policies?	
8 after the bank received the summons and notice in	8 MR. BUTLER: Hold on a second. Let me	
9 August of 2010, is that correct?	9 think about that one. I think it is okay. Let me	
10 A Correct, we took copies of the	10 hear the question again.	
11 available information which was previously already	11 (Court reporter read back.)	
12 collected in the ordinary course of business. That	12 A Not that I am aware of, no.	
13 is what I also wanted to make.	13 BY MR. FLUGMAN:	
14 Q I understand. When BIL collected	14 Q This is again a yes or no, I'm not	
15 the information relating to the four feeder funds	15 asking for the substance of any conversations. Did	
16 that BIL commercialized in early	16 any attorney advise BIL on document collection or	
17 A Two of them.	17 preservation in or around December 2008 after the	
18 Q Only two of them, Rafale and Blue	18 Madoff collapse became public?	
19 Star?	19 MR. BUTLER: I don't think I can allow	
20 A Exactly. We granted credits to	20 that. It is going into substance of requests	
21 four, but only two of the four we commercialized.	21 specifically of advice. Asking when law firms were	
22 Q But did you collect documents in	22 retained is not privileged and fairly within the	
23 early 2009 with respect to all four or just the two	23 scope. But asking about when particular advice may	
24 that BIL commercialized?	24 have been given I think goes a step too far. I	
25 A They were the four main the	25 instruct the witness with not to answer as phrased.	
222	22	24
1 four feeder funds.	1 MR. FLUGMAN: For the record I disagree.	
1 four feeder funds. 2 O Did the collection of documents	1 MR. FLUGMAN: For the record I disagree. 2 I think that information is the kind of information	
2 Q Did the collection of documents	2 I think that information is the kind of information	
2 Q Did the collection of documents 3 with respect to those four feeder funds in early	2 I think that information is the kind of information 3 that would be routinely included in a privilege log	
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Q Did the collection of documents with respect to those four feeder funds in early 2009 include the collection of any electronic documents? A No. Q Does that include e-mails as well, BIL did not collect any e-mails from relevant custodians related to those four feeder funds at that time? A That is correct. It was not in the scope of no. Sorry. Q After BIL learned about the BLMIS collapse, did BIL assign any employees the task of monitoring news about the Madoff investigation and for prosecution? MR. BUTLER: Objection. Outside the scope. But he can answer. A BIL and Dexia at the time had its communication department. They were following up closely about the Madoff case in general or other information, yes.	I think that information is the kind of information that would be routinely included in a privilege log at that level of generality. MR. BUTLER: I hear you, it is pretty general. I think it is pretty close. I think it is close but I think it is over the line. I think I will allow a question about did when the bank might have consulted lawyers on the general topic of document preservation. Maybe I would allow it in that form. BY MR. FLUGMAN: Q Let's start there. Mr. Dewitte, when did BIL first consult lawyers with respect to document preservation and collection obligations as it relates to Madoff and BLMIS? MR. BUTLER: That's fine. You can answer the question, if you know. MR. BUTLER: That's fine fine. You can answer the question, if you know. MR. BUTLER: That's fine fine. You can answer the question, if you know. MR. BUTLER: That's fine fine. You can answer the question, if you know. Do you know if that occurred in a 2008 after December 12th?	
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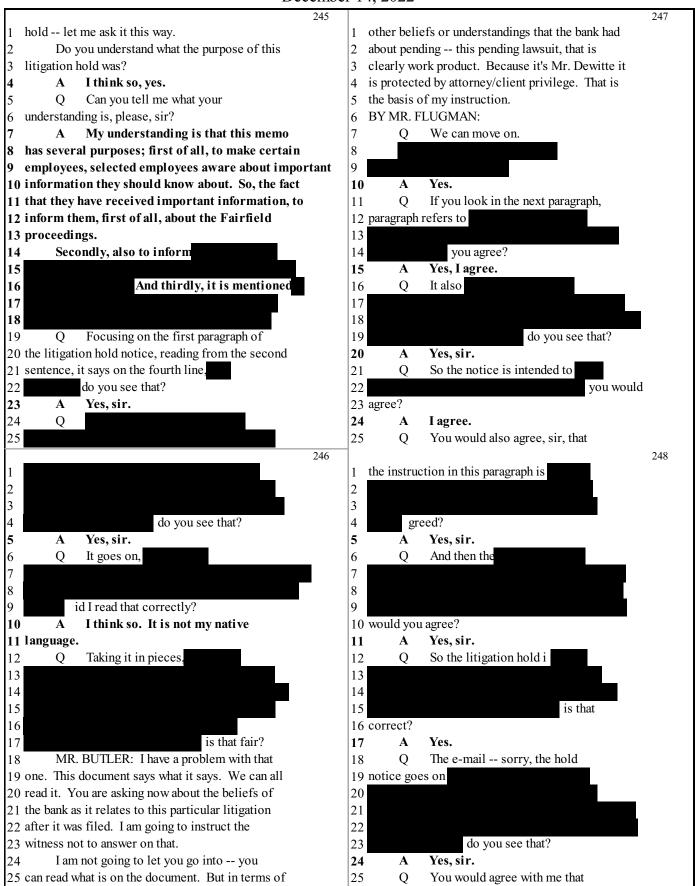
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1 protect documents, regardless of any external advice	1 BIL actually collect any electronically stored
2 we received at the time.	2 information, including e-mails from anyone at the
Q Perhaps let me ask it this way.	3 bank, as part of an effort to preserve documents
4 You testified that the bank collected certain	4 related to Madoff, BLMIS or feeder funds that
5 information with respect to the four feeder funds	5 invested in Madoff?
6 sometime in early 2009, is that correct?	6 A Yes, there has been an effort to
7 A Yes.	7 collect information. For instance, the notice to
8 Q So prior to doing that document	8 shareholders, which has been issued by the different
9 collection, had BIL consulted with lawyers regarding	9 feeder funds, these have been collected.
10 document preservation and collection obligations?	10 Q Were those collected in electronic
11 A Not that I am aware of, no.	11 form in 2009?
12 Q Do you know whether BIL was	12 A Some of these are available in
13 already let me rephrase.	13 electronic form, yes.
14 Was BIL familiar with U.S. litigation	14 Q Are you aware of any individuals
15 prior to December of 2008?	15 at BIL whose ESI, including e-mails, were available
16 A Not to the best of my knowledge,	16 for collection in 2009?
17 no.	17 A In 2009 we have asked different
18 Q Do you know whether BIL had been a	18 people working on the Madoff file, in relation to
19 party to any U.S. litigation prior to December of	19 feeder funds I mentioned previously, to provide
20 2008?	20 information they had to the legal departments.
21 A Again, to the best of my	21 Q Sorry, I don't mean to ask my
22 knowledge, no.	22 question again. I'm just not sure I got an answer
23 Q Was any electronically stored	23 to the question. Are you aware of any ESI being
24 information relating to BIL's Madoff exposure	24 collected in 2009 from anyone as it relates to
25 collected at any point in 2009?	25 Madoff, BLMIS or any feeder fund that invested in
226	228
1 A Sorry, could you repeat that	1 Madoff?
2 again.	2 A Yes, there has been ESI collected.
3 Q Sure. Was any electronically	3 Q What ESI was collected?
4 stored information relating to BIL's Madoff exposure	4 A For instance, the in 2009 the
5 collected at any point in 2009?	5 perspective of the different feeder funds, or as I
6 A You are asking if any information	6 told you before, the general information notices to
7 in relation to BLMIS has been stored in 2009?	7 shareholders, so this kind of information that has
8 Q Let me ask it a different way.	8 been collected.
9 A Sorry for that.	9 Q Am I correct in understanding that
10 Q That's okay. In 2009, did BIL	10 that information relates to the four feeder funds we
11 collect any e-mails or other electronically stored	11 have been discussing here today?
12 information from anyone in the bank relating to	12 A Yes.
13 Madoff, BLMIS or feeder funds that invested with	13 Q I am also correct in understanding
14 Madoff?	14 that there was no collection of ESI or
15 A Well, electronic information or	15 electronically stored information with respect to
16 information in general?	16 Fairfield during 2009?
17 Q I'm focused specifically on	17 A That is correct, yes.
18 electronic information, but broadly. So e-mails or	18 Q That is also true for 2010,
19 other forms of electronic information.	19 correct?
20 A Well, electronic information	20 A That is correct, yes.
21 personally I have stored electronic information	21 Q I would like to focus specifically
22 available I mean exchange of e-mails between	22 on Fairfield. When did BIL first become aware that
23 employees of the bank following the set-up of this	23 the Fairfield liquidators were filing lawsuits to
24 Madoff task force, yes.	24 recover moneys that had been paid out to investors
25 Q So my question, though, was, did	25 in the Fairfield funds?

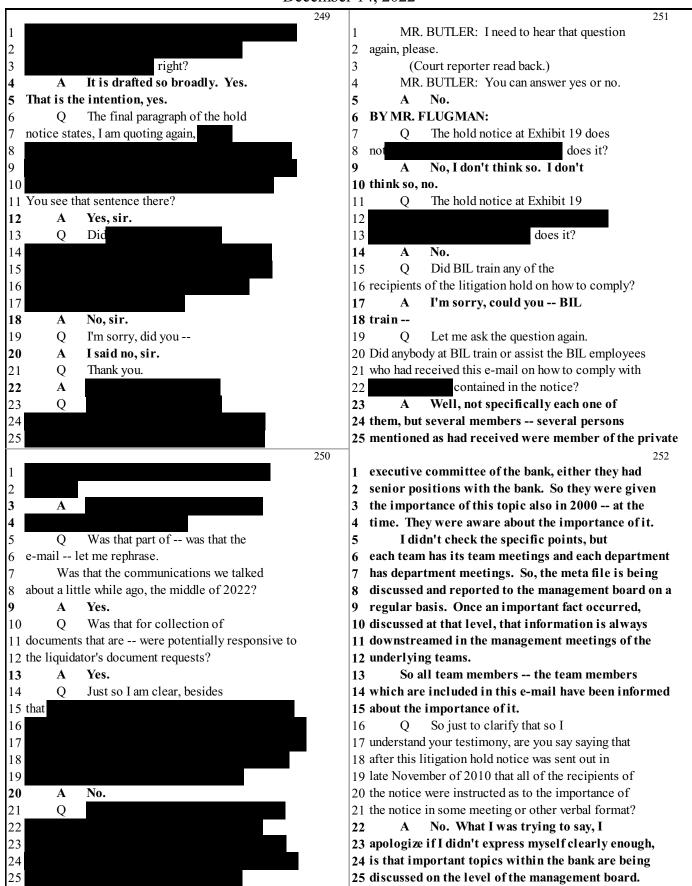


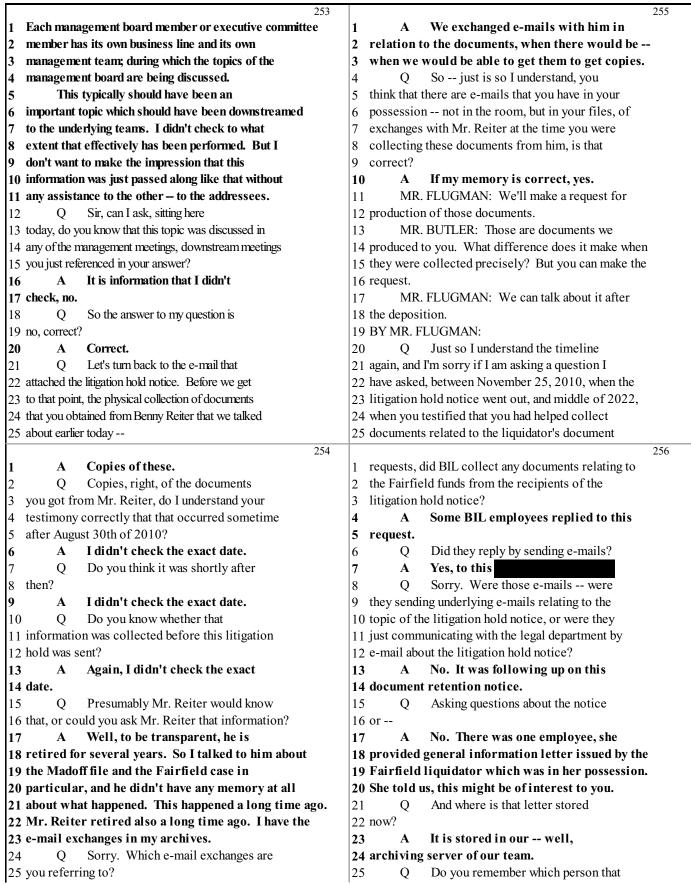


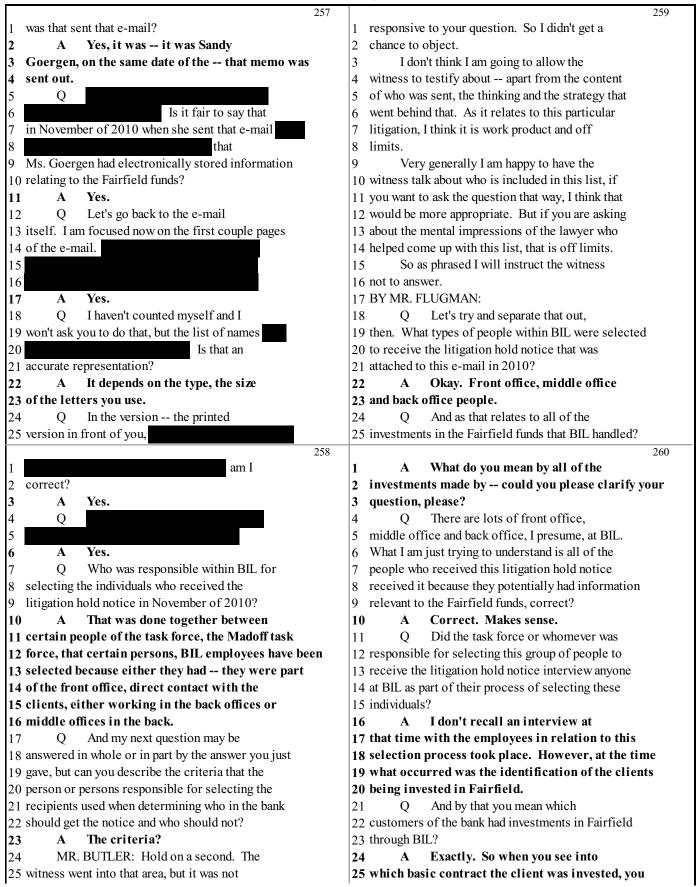


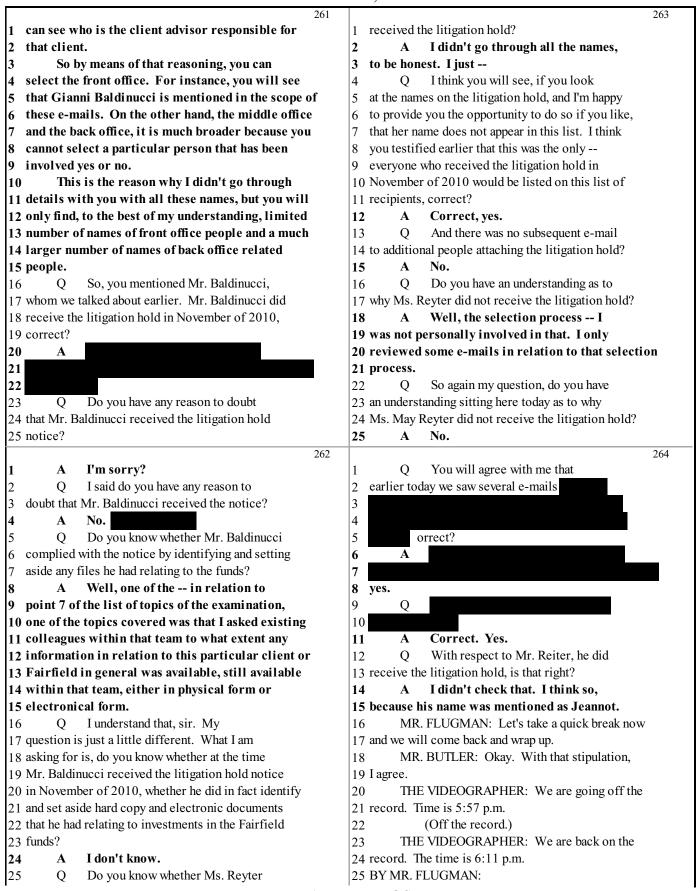


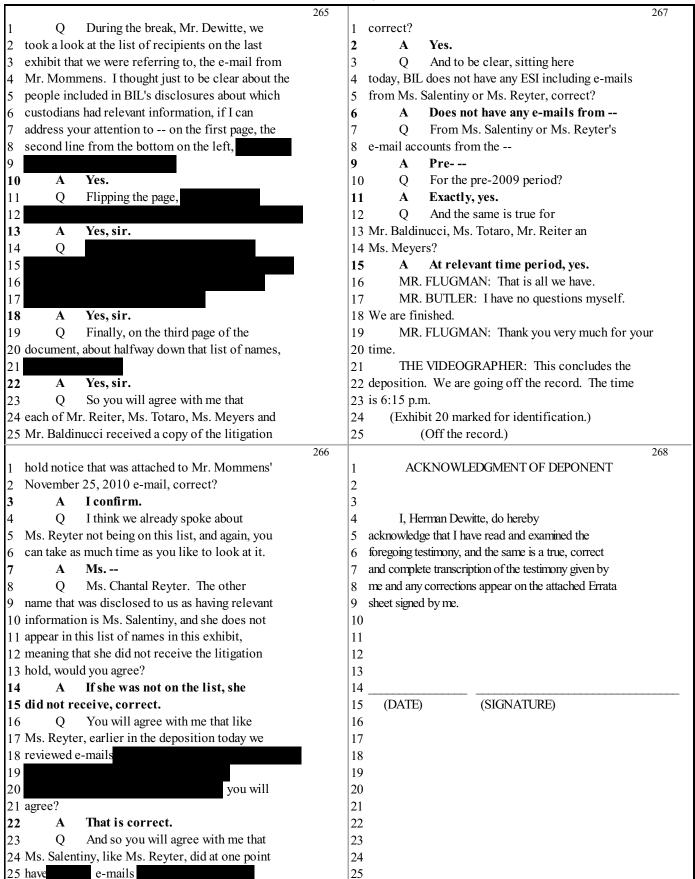












10-03635-jpm Doc 1003-2 Filed 02/17/23 Entered 02/17/23 15:20:51 Exhibit B-Deposition Transcript with redactions relating only to documents and Pg 70 of 130 Transcript of Herman Dewitte 68 (269 to 272)

	269	
1 CERTIFICATE OF COURT REPORTER		
3 I took the stenotype notes of the foregoing		
4 deposition and that the transcript thereof is a true		
5 and accurate record transcribed to the best of my		
6 skill and ability.		
7 I further certify that I am neither		
8 counsel for, related to, nor employed by any of		
9 the parties to the action in which this deposition		
10 was taken, and that I am not a relative or		
11 employee of any attorney or counsel employed by		
12 the parties hereto, nor financially or otherwise		
13 interested in the outcome of the action.		
Dated this 22nd day of December, 2022.		
15 Bated this 221th day of Beechloof, 2022.		
16		
17		
18		
19		
20		
21		
22 41/		
22 23 ())		
24		
25 Christine Myerly		

Transcript of Herman Dewitte



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Transcript of Herman Dewitte



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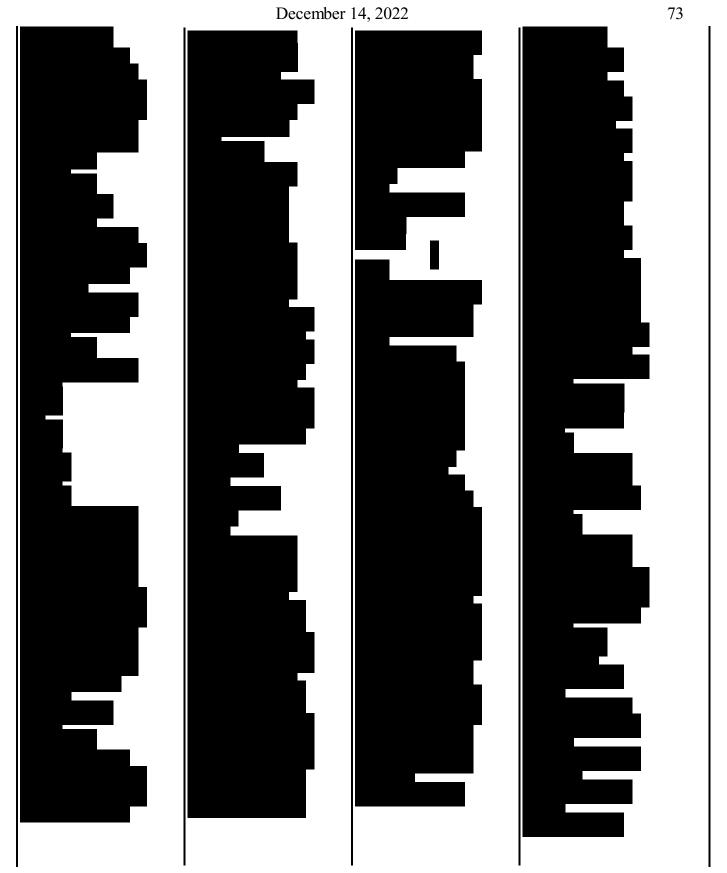
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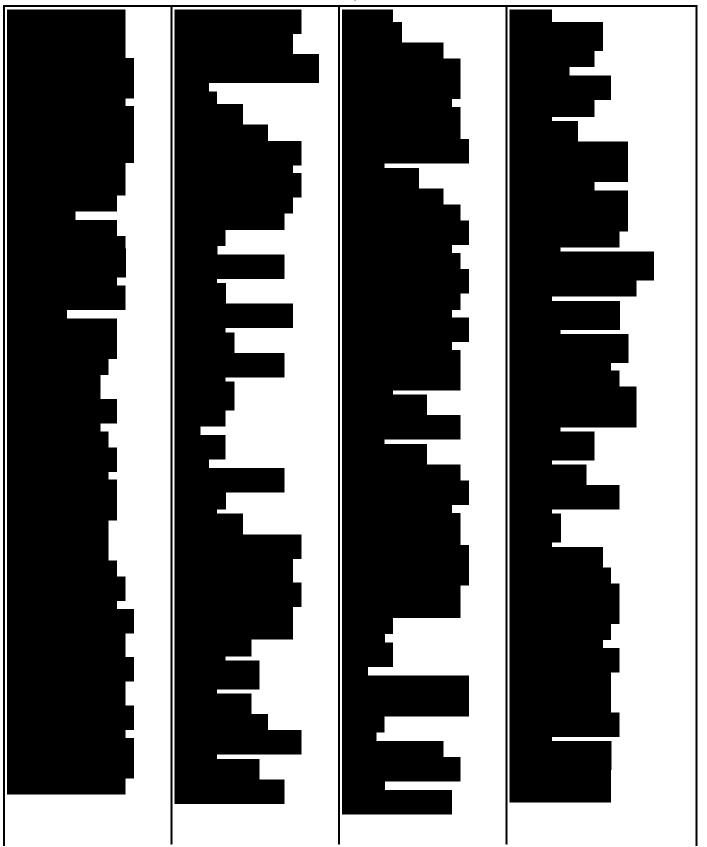


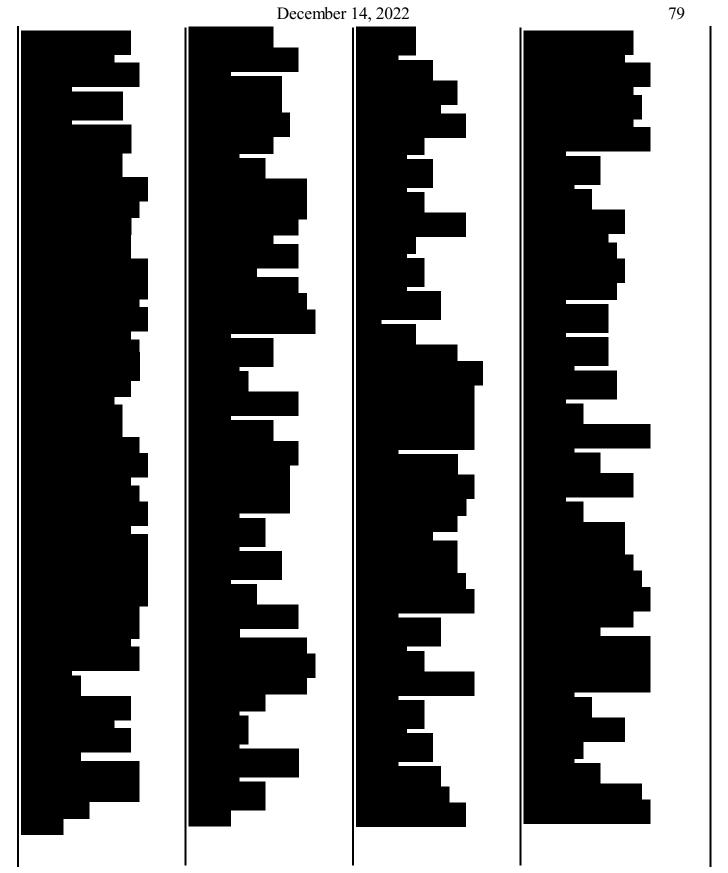
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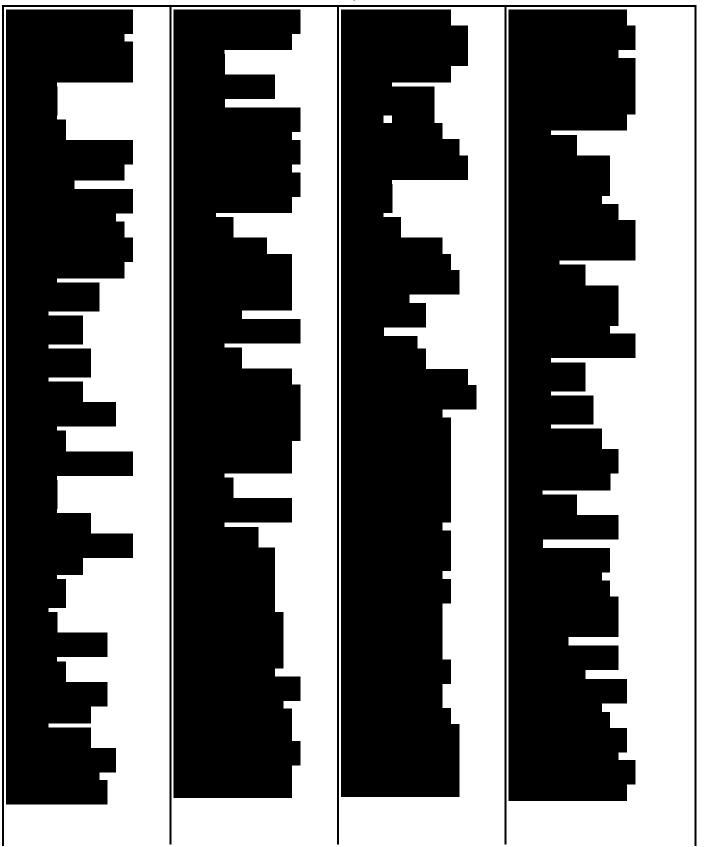


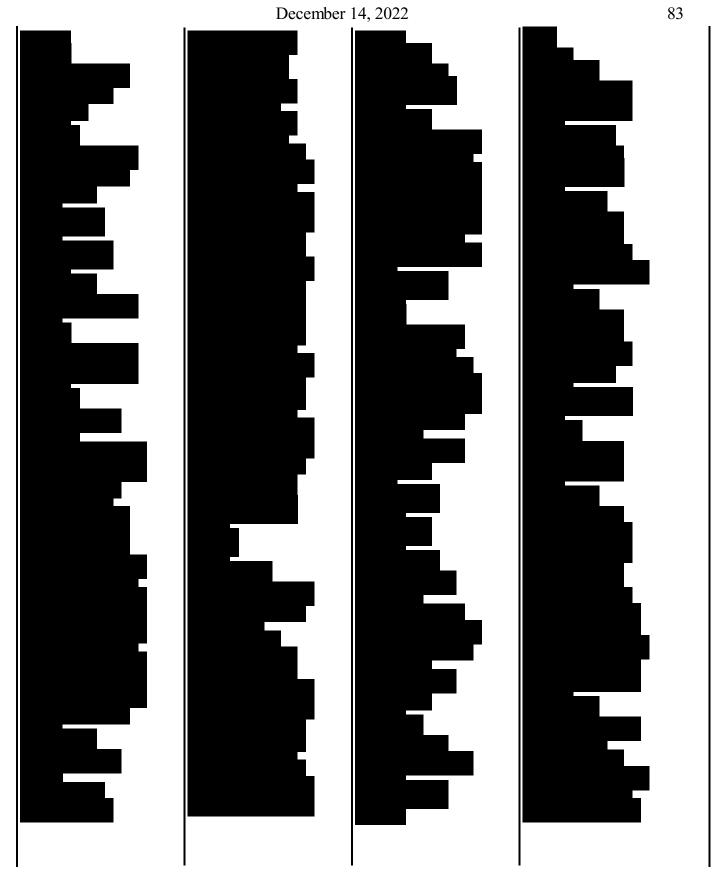


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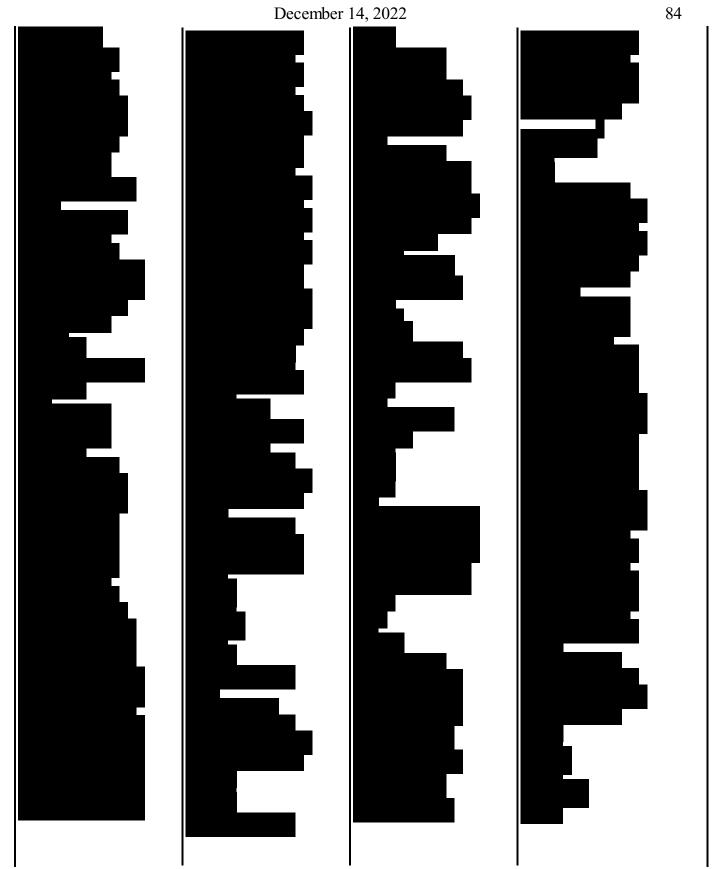
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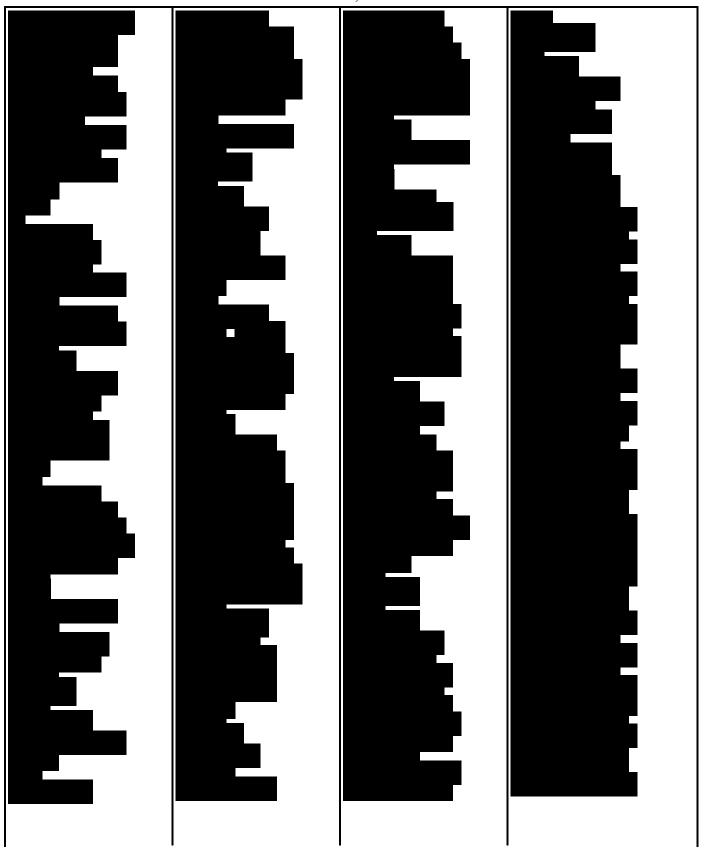
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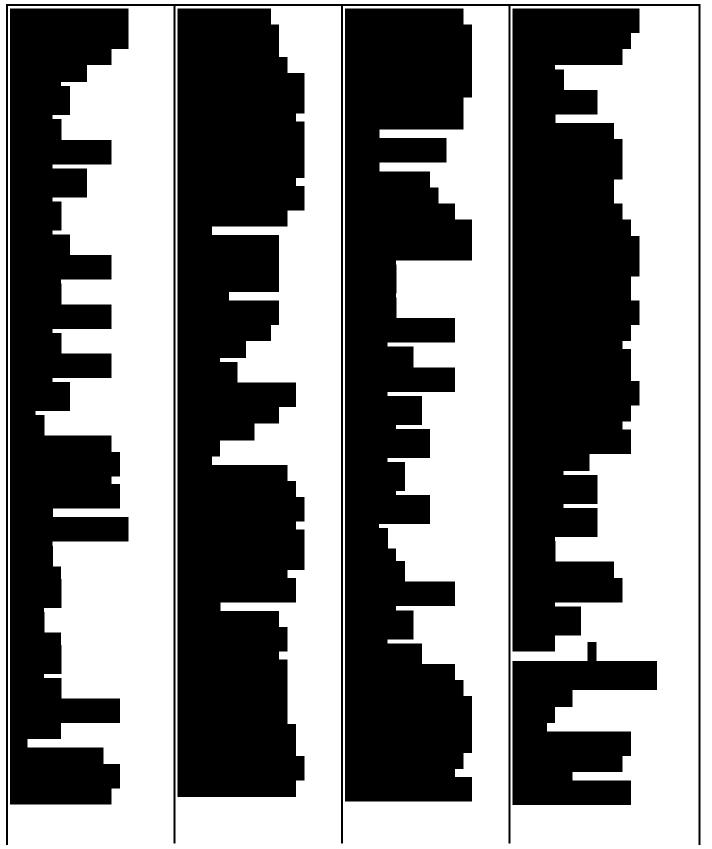


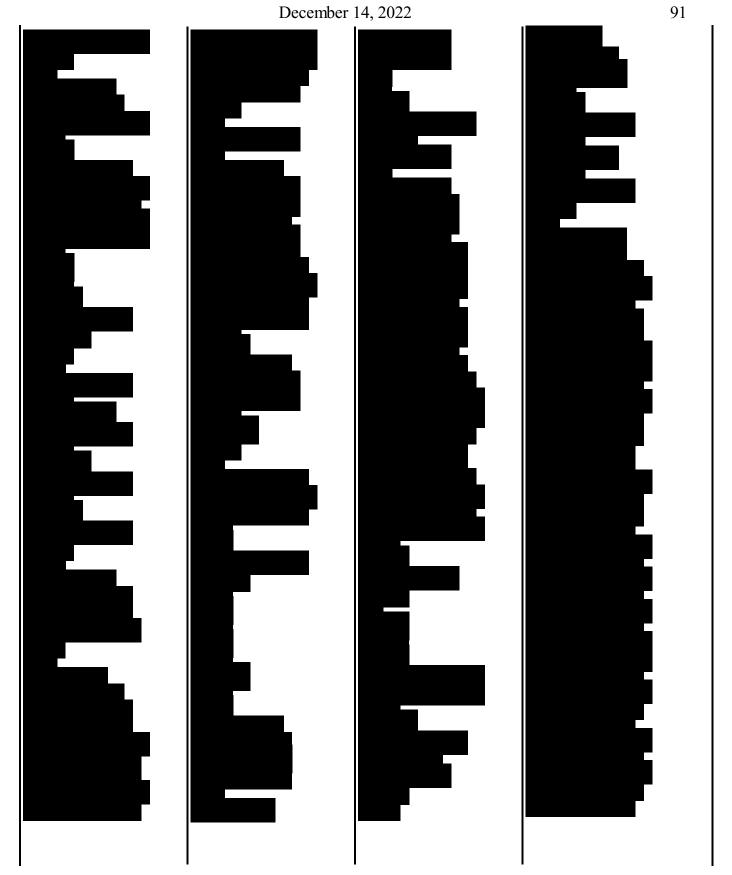
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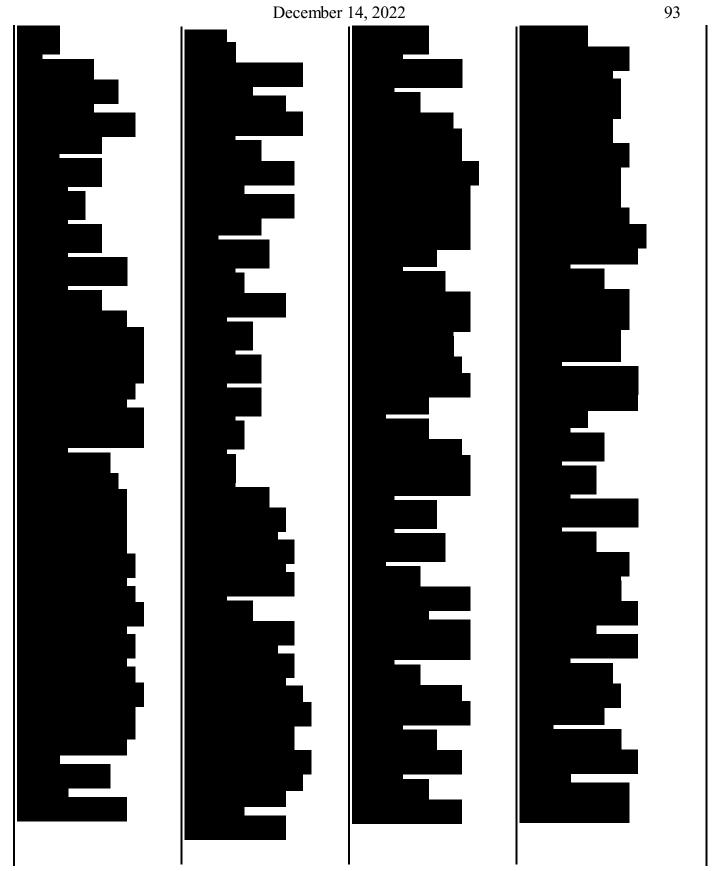


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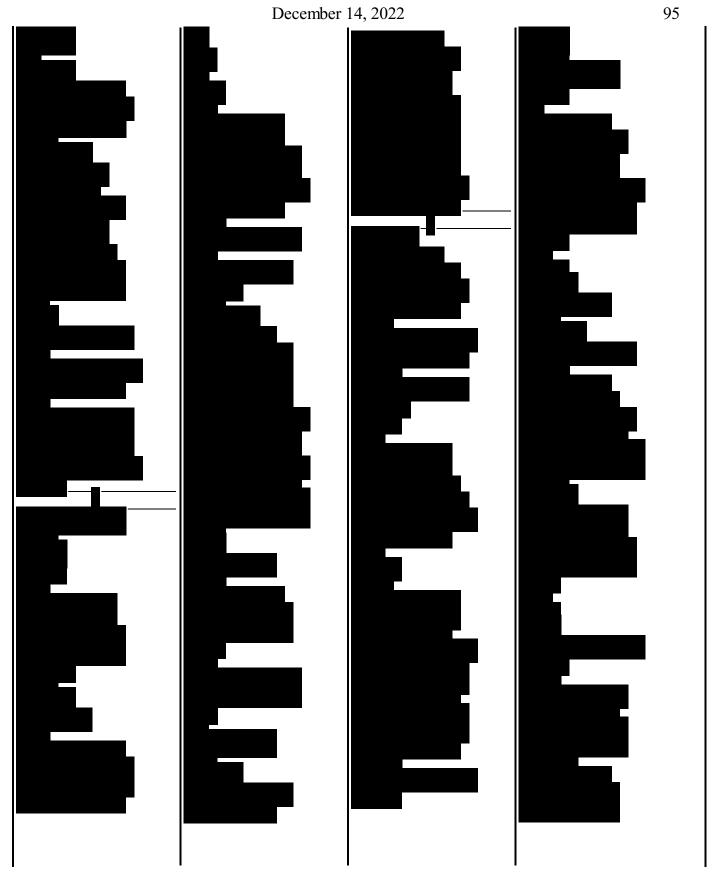


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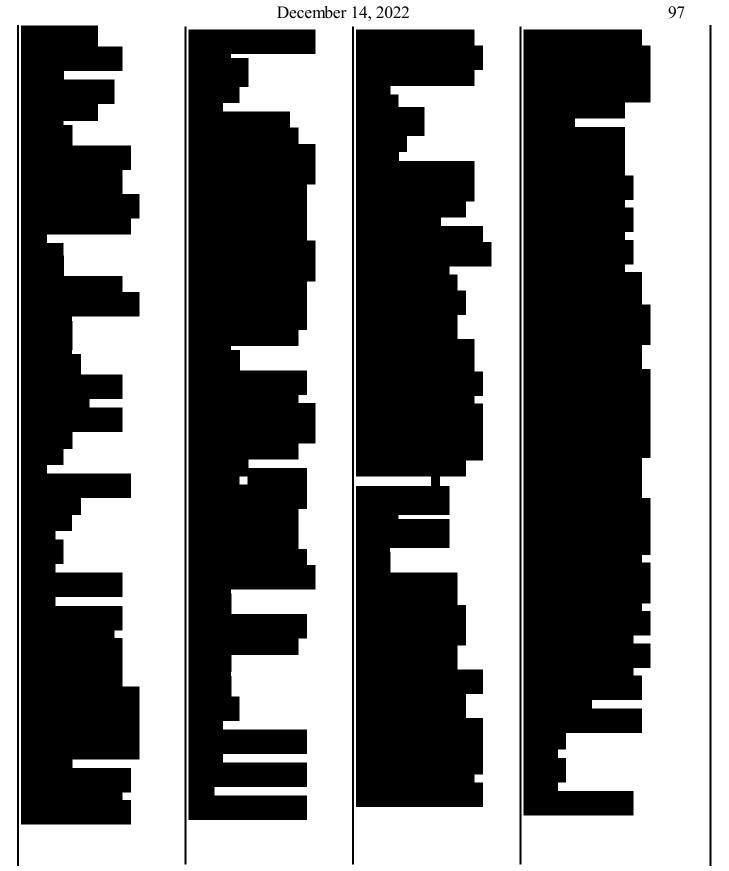


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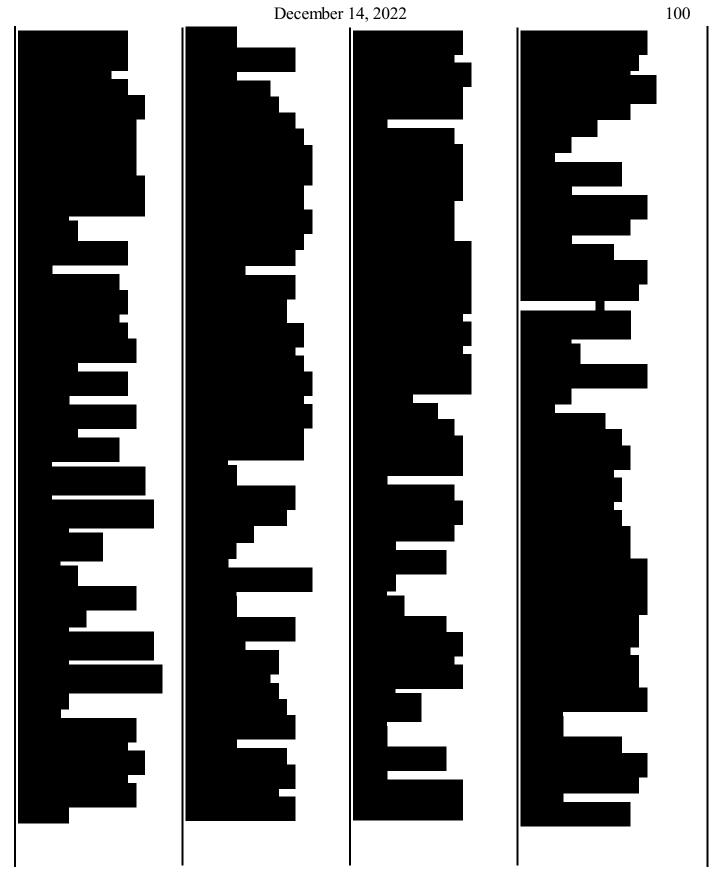
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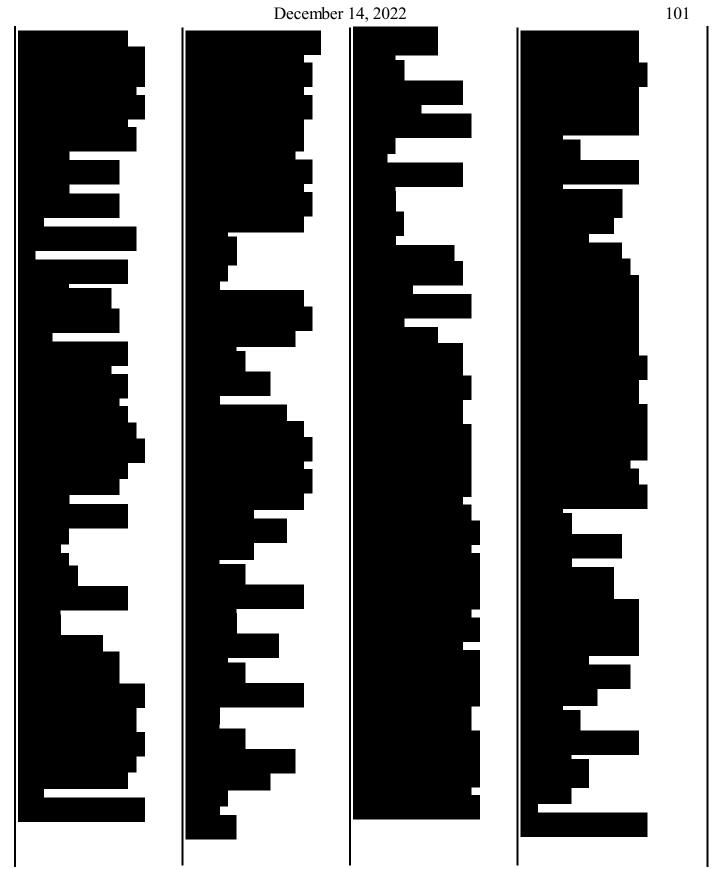
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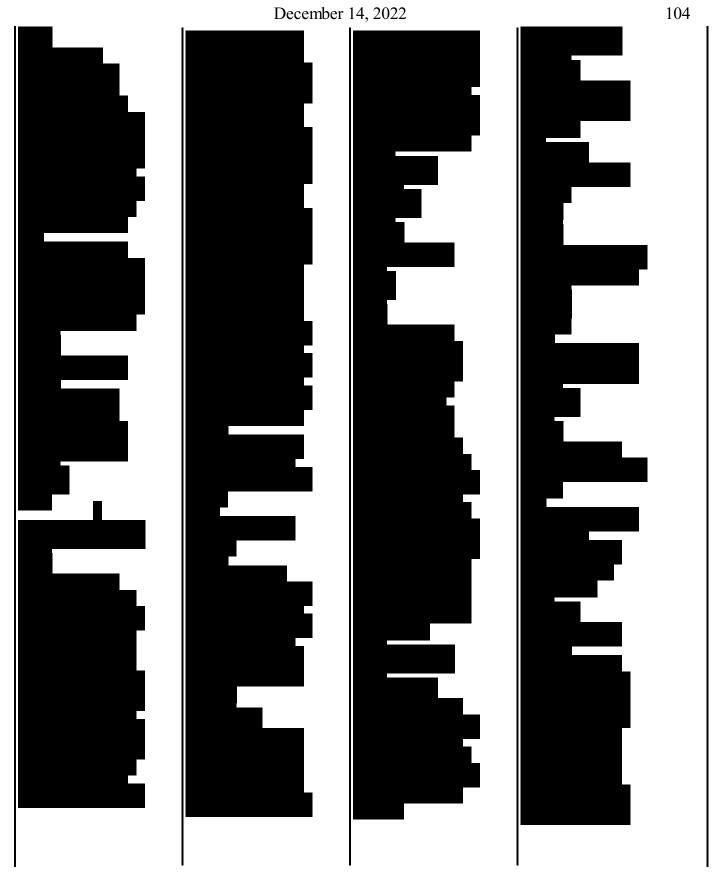
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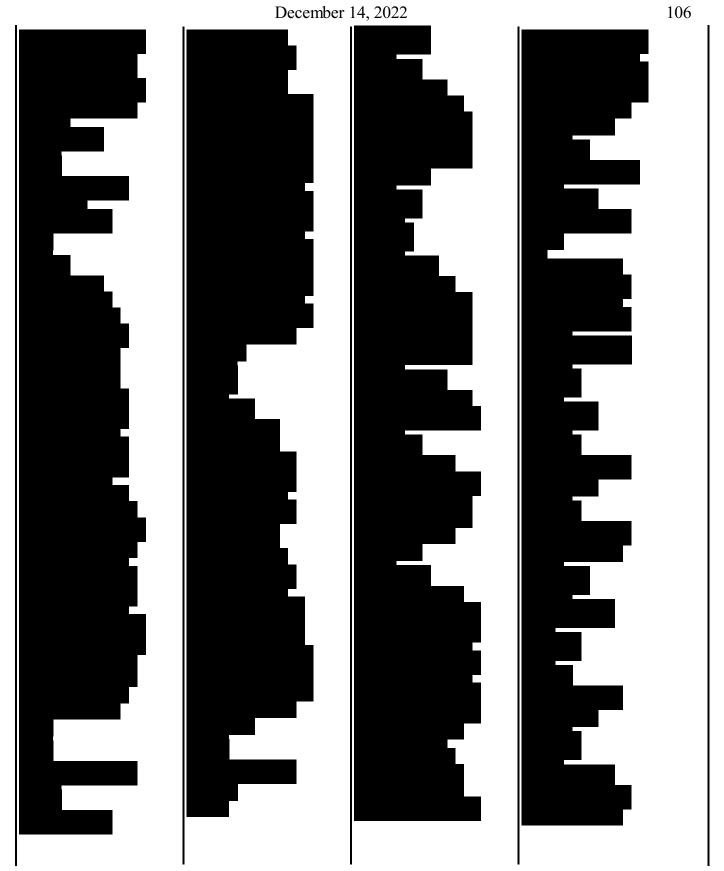
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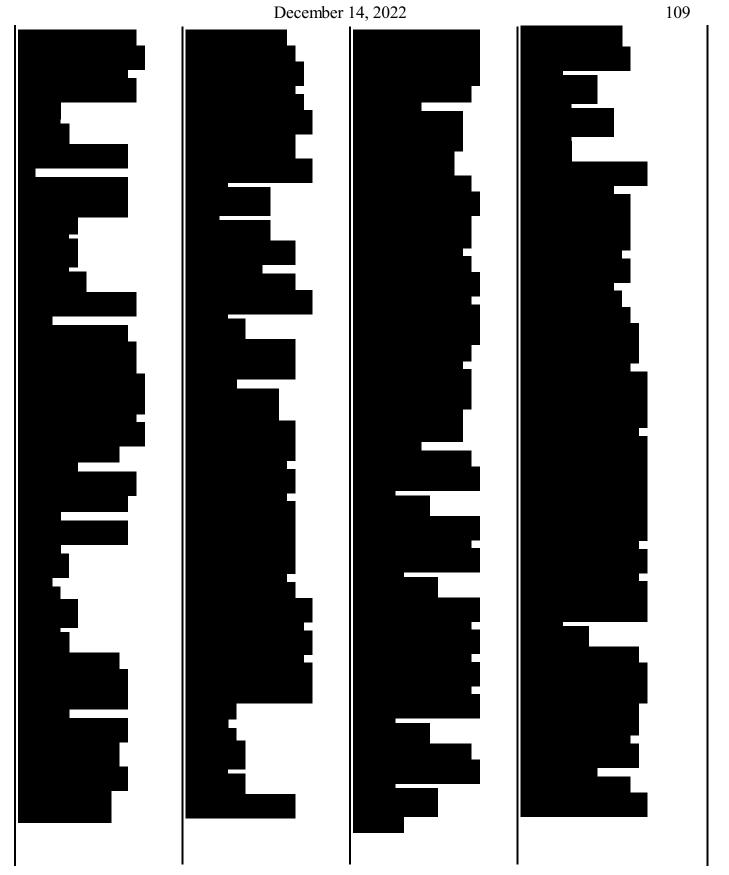
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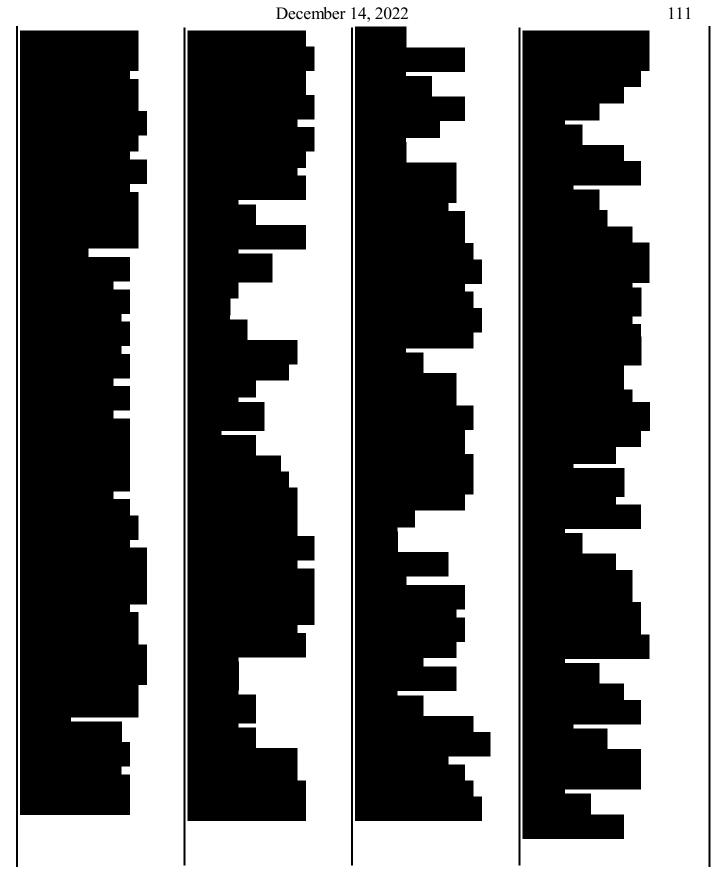
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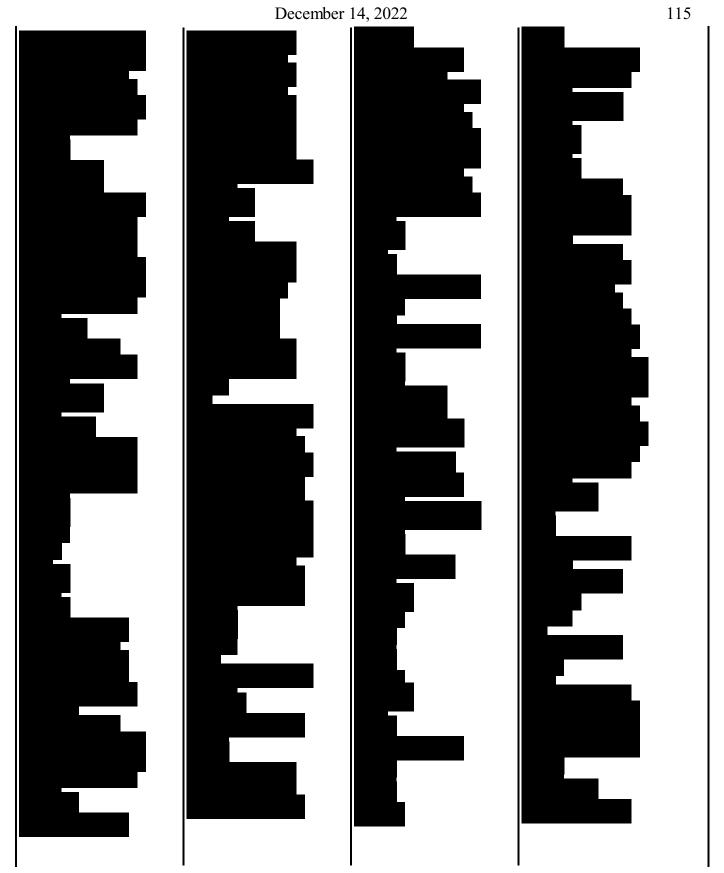


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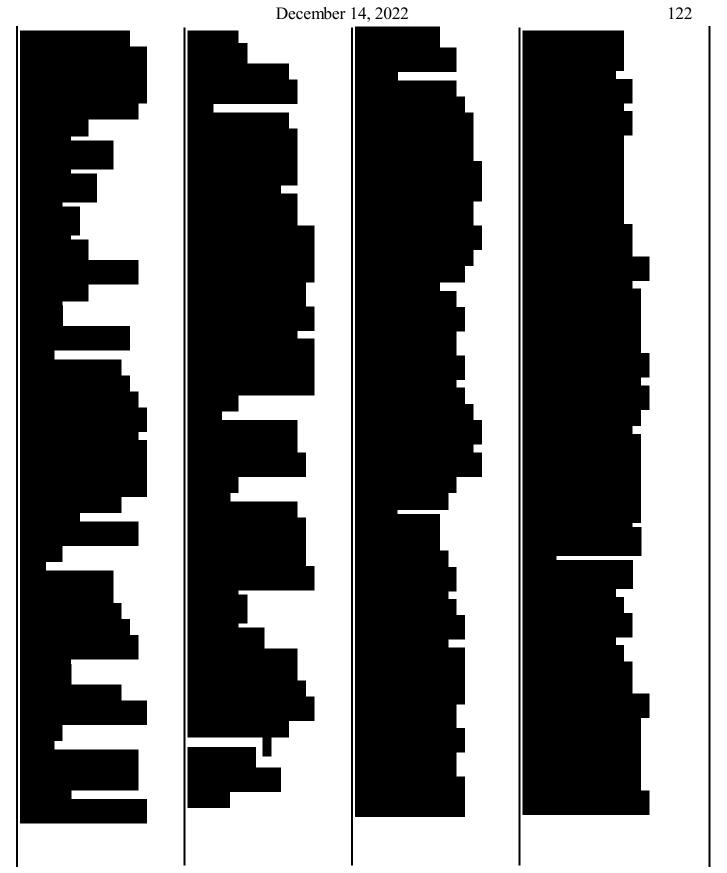
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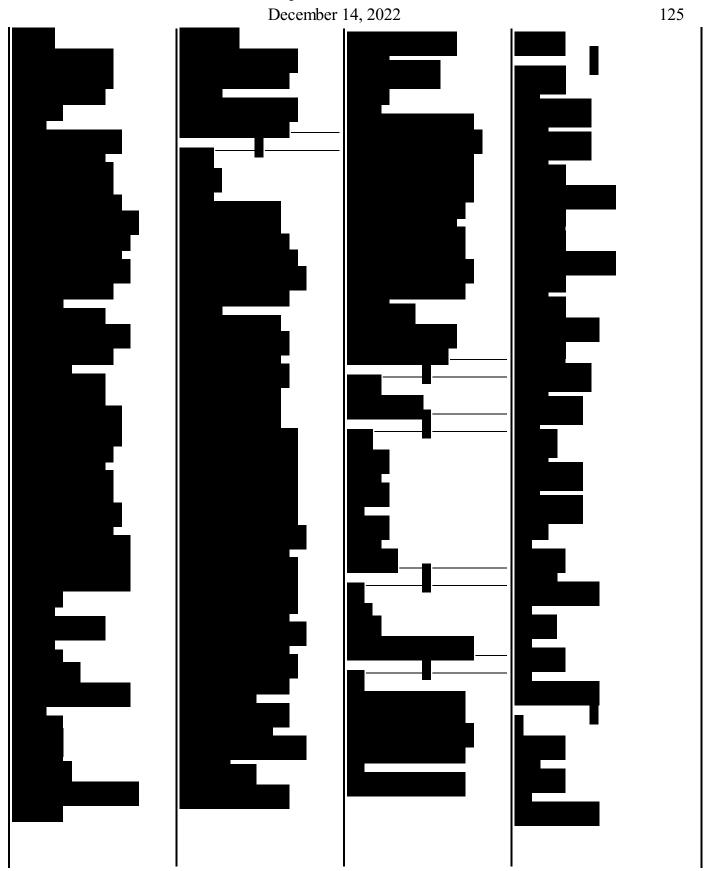


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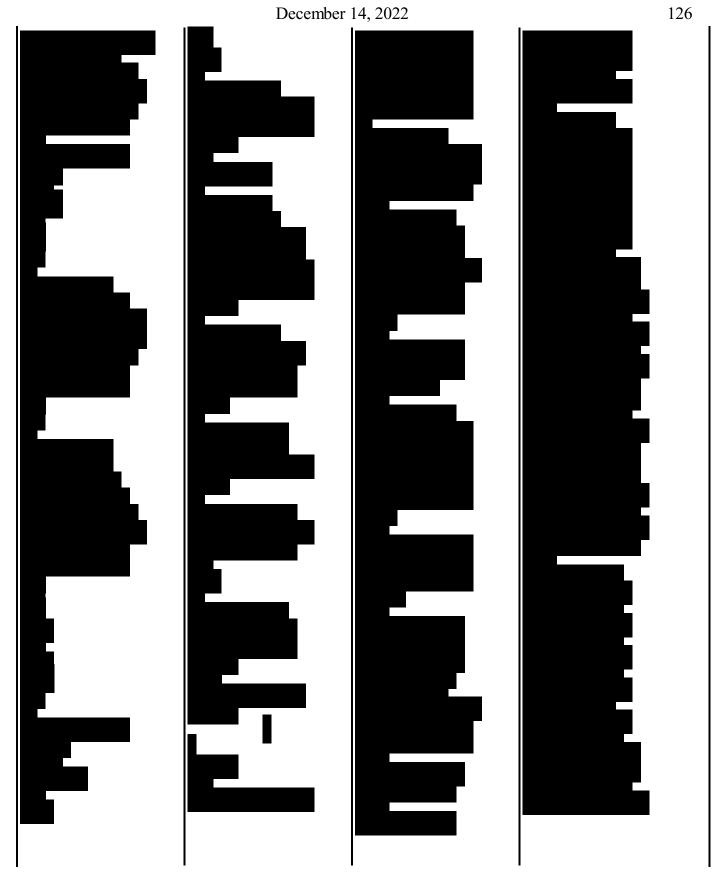
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